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Bulletin Index-Digest System

Basic Volume
1953-1986

Service 2
Estate and
Gift Taxes

The synopses in this publication are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

Department of the Treasury
Internal Revenue Service
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We welcome your comments and any suggestions you may have for making future editions of the *Bulletin Index-Digest System* more useful to you. Please send them to: *Director,* Tax Forms and Publications Division, Internal Revenue Service, Washington, D.C. 20224.

The complete *Bulletin Index-Digest System,* or any of the individual Services, may be purchased on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Any questions concerning subscriptions should be addressed to the Superintendent of Documents.

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Introduction

The Bulletin Index-Digest System provides a method for researching matters published since 1952 in the Internal Revenue Bulletin, which is the authoritative instrument of the Commissioner for announcing official rulings and procedures of the Internal Revenue Service and for publishing Public Laws, Treasury Decisions, and other items of general interest. It is divided into four Services as follows:

Service No. 1—*Income Tax*, Publication 641 (12-85)
Service No. 2—*Estate and Gift Taxes*, Publication 642 (12-86)
Service No. 3—*Employment Taxes*, Publication 643 (12-86)
Service No. 4—*Excise Taxes*, Publication 644 (12-86)

Each Service consists of a basic volume and the latest cumulative supplement. The cumulative supplements are issued quarterly for the Income Tax Service, and semi-annually for the other three Services. Periodically the material in the basic volume and the cumulative supplement will be combined in a new basic volume.

Digests

The major portion of this Bulletin Index-Digest System consists of digests (brief summaries) of Revenue Rulings and Revenue Procedures alphabetically arranged under topical headings and subheadings, along with digests of Supreme Court decisions, adverse Tax Court decisions on cases involving tax issues in which the Commissioner has announced acquiescence or nonacquiescence, Executive Orders, Treasury Department Orders, Delegation Orders, and other miscellaneous items published in the Bulletin. Each digest is preceded by descriptive "key words" that further identify the subject matter and is followed by a citation to the Code and Regulations section under which the item was published, and also a citation to the item and the Bulletin in which the full text of the item may be found. This arrangement of digests under topical headings make it possible to use the "subject matter" approach to find the Revenue Rulings or other items most specifically in point on a particular issue. Public Laws, Treasury Decisions, and Tax Conventions are not digested, but are listed in separate finding lists.

The digests are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

The topical headings used in arranging the digests are selected from the List of Topical Headings Used, beginning on page vi.

Finding Lists

The System contains finding lists arranged in various forms to accommodate alternate methods of Bulletin research. Each item in the finding lists includes a citation to a numbered digest, or to the Bulletin where the full text of the item may be found.

Internal Revenue Code. Separate finding lists are provided for (1) Revenue Rulings, Revenue Procedures, and other items published under a particular section of the Internal Revenue Code and the Regulations thereunder, and (2) the Public Laws that amend the Internal Revenue Code and Treasury Decisions that amend regulations.

Statement of Procedural Rules. Separate finding lists are provided for (1) the Statement of Procedural Rules, and (2) Revenue Procedures relating to matters covered by the Statement of Procedural Rules.

The following special finding lists provide additional means of searching for particular items:

Decisions of the Supreme Court. Supreme Court decisions published in the Bulletin are listed alphabetically by case name.

Decisions of the Tax Court. Adverse Tax Court decisions on substantive issues, with respect to which the Commissioner has announced acquiescence or nonacquiescence, are listed alphabetically by case name.

Revenue Rulings and Revenue Procedures Under Tax Conventions. Revenue Rulings and Revenue Procedures that provide technical or procedural guidance with respect to a Tax Convention appear under the name of the country to which the rulings or procedures apply.

Miscellaneous Items Published in the Bulletin. This is a list of Delegation Orders, Executive Orders, Treasury Department Orders, and other miscellaneous Bulletin items that are not included in other special finding lists.

Listing of Revenue Rulings and Revenue Procedures. Revenue Rulings and Revenue Procedures that have been issued from 1953 through 1986, inclusive, and have not been specifically revoked, superseded, or declared obsolete, are listed numerically.

Actions on Previously Published Revenue Rulings and Revenue Procedures. All Revenue Rulings and Revenue Procedures that have been affected by later published rulings or procedures are listed in numerical order. Each listing identifies the later item, indicates whether the original item was modified, revoked, superseded, or otherwise affected, and includes a citation to the Bulletin where the later item may be found.

Public Laws Published in the Bulletin. This is primarily a list of Public Laws amending the Internal Revenue Code, arranged in sequence, by Public Law number. Each listing includes the popular title of the law, if any, and citations to the law and the related committee reports published in the Bulletin. Also included are listings of other Public Laws published in the Bulletin that, while not primarily concerned with Federal taxes, make some reference to tax matters.

All Previous Index-Digest Volumes Replaced

The December 1986 basic volumes cover material published in the Bulletin after 1952. They replace all previously issued Index-Digest volumes.

Nearly all pre-1953 published rulings identified as having significant application to future transactions have been republished as Revenue Rulings under current law and regulations. Thus, these basic volumes and their periodic cumulative supplements provide a substantially complete research and reference guide to Bulletin material.

How to Use Your Bulletin Index-Digest System

The Bulletin Index-Digest System is designed primarily to help you find the Service position on any tax issue covered in material published in the Internal Revenue Bulletin. You will also find it useful for researching laws, regulations, and other matters published in the Bulletin. You can find the items published in the Bulletin that deal with your particular tax problem by using either of two basic research methods.

Subject Matter Method

Suppose you want to know if the Service has ruled on whether an election to use the alternate valuation for a decedent's estate will be permitted if the election is not specified on the return.

First decide on your main subject; in this case, you might choose the term "Alternate valuation." You would turn to the List of Topical Headings Used, beginning on page vi. This list gives all subject matter headings preceded by a digest prefix number under which digests are arranged. You will save time by checking this list to see whether the term you have chosen is listed there and whether it is cross-referenced to another heading.

Scanning the list under ESTATE TAX, you will find "Alternate valuation (See: Valuation)." You will notice the Index heading "172. Valuation: Alternate." Next, find the digests under "Valuation" with the subheading "Alternate" by following the alphabetical topical heading at the top of the pages or the digest number at the bottom of the pages in the digest section of the book beginning after page 28. The digest pages are not numbered.

Each digest is preceded by a digest number, and then by descriptive key words that further identify the issue. Under the heading "Valuation: Alternate" you will find all the digests starting 172.—; you will also find that the word "Election" is the first key word for a group of digests. By scanning the descriptive key words in this group, you can select the relevant digest (explanation has been added):

Explanation	**Digest**
1. Digest Number	172.14
2. Digest of Ruling	**Election; failure to designate.** The failure of an executor to designate an election of the alternate valuation on the estate tax return does not preclude valuation of the decedent's gross estate by the alternate valuation method where the information shown on the return otherwise evidenced a clear intention to exercise the election.
3. Code & Reg. Citation	§20.2032-1. (Sec. 2032, '54 Code.)
4. Revenue Ruling & Bulletin Citation	Rev. Rul. 61-128, 1961-2 C.B. 150.

The digest will help you decide whether the Revenue Ruling deals with the problem you are researching, which it does in this case. At the end of the digest you will find a citation to the appropriate sections of the regulations and law, and also a citation to the item and the Bulletin in which the full text of the item is published. You would then go to page 150 of Cumulative Bulletin 1961-2 to determine whether the facts in Rev. Rul. 61-128 are substantially the same as those in your case.

Code Section Method

Assume your problem is the same as that used in explaining the subject matter method. You know that the problem falls under section 2032 of the 1954 Code and section 20.2032-1 of the Estate Tax Regulations.

Turn to the Finding List for the Internal Revenue Code of 1954, beginning on page 1. This list identifies Revenue Rulings or other items published in the Bulletin under a particular section of the Code and Regulations. You will find several items listed under the Code and Regulation section indicated above and each item is followed by a number that identifies the appropriate digest. For example, on page 1 of the finding list, the 6th item listed under Regulation section 20.2032-1 is Rev. Rul. 61-128, 172.14.

The digest numbers at the lower left and right corners of facing pages in the digest section identify the first and last digest on those pages. By following the digest numbers at the bottom of the digest pages, you will find digest number 172. 14, and other digests on Regulation section 20.2032-1. As explained above, under Subject Matter Method, you can select the relevant digests by scanning the descriptive key words.

This volume does not contain a Code section finding list for Revenue Rulings, Revenue Procedures, Supreme Court decisions, and Actions on Decisions of the Tax Court issued under the 1939 Code. Items published under the 1939 Code are cited under the corresponding provisions of the 1954 Code, and each digest of such items contains the appropriate 1939 Code and Regulations citations in addition to the corresponding 1954 Code citations.

Researching Public Laws, Committee Reports, and Treasury Decisions

If you know the number of the Public Law, you can quickly identify the Bulletin in which it is published. Under the finding list of Public Laws Published in the Bulletin, beginning on page 26, Public Laws are listed in numerical order. Each listing gives the number assigned to the original bill, its popular title (if any), the related Committee Reports published in the Bulletin, and the appropriate Bulletin citations.

If you need to identify or find a Public Law (or a related Committee Report), or a Treasury Decision relating to a particular issue, you can use the Code section method. You can easily find any related Committee Reports once you have found the Public Law; the law has a footnote indicating the Bulletin pages where the reports are reproduced.

Assume you want to refer to a Public Law or Treasury Decision on survivor benefits under a serviceman's annuity and you know it falls under section 2039 of the Internal Revenue Code of 1954 and section 20.2039-2 of the Regulations. You would turn to the 1954 Code Section Finding List for Public Laws and Treasury Decisions, beginning on page 17. On that page, and the following page you will find citations to all the Public Laws and Treasury Decisions issued under this Code and Regulation section. You can use the same method to check the 1939 Code Section Finding List.

Researching Tax Conventions

You can find information on Tax Conventions in two places.

Finding List of Revenue Rulings and Revenue Procedures under Tax Conventions, page 10.

In this finding list, you will find another alphabetical list of countries. Revenue Rulings and Revenue Procedures published under the provisions of a Tax Convention are listed under the name of the country. The digest number follows each item. Using this number, turn to the digest to see if it relates to your problem. The Bulletin citation is given at the end of the digest.

Digests of Revenue Rulings, Revenue Procedures, and other Items except Public Laws, Treasury Decisions and Tax Conventions, beginning after page 28.

Under the alphabetical headings, "ESTATE TAX: Tax Conventions and GIFT TAX: Tax Conventions," you will find digests of Revenue Rulings and Revenue Procedures published under the provisions of a Tax Convention listed under the name of the appropriate country.

Researching Supreme Court Decisions

All Supreme Court decisions on Federal tax matters are published in the Bulletin.

You can find Supreme Court decisions by using either the subject matter method or the Code section method. In addition, if you know the name of the case, you can also find the decision by turning to the finding list of Decisions of the Supreme Court, beginning on page 7. The decisions are listed in alphabetical order by name, followed by the court decision number and the digest number. Using this number, turn to the digest. The Bulletin citation is given at the end of the digest.

Researching Tax Court Decisions

Tax Court decisions are not published in the Bulletin, but announcements concerning the Service's acquiescence or nonacquiescence in adverse Tax Court decisions are published. Digests of adverse Tax Court decisions in which the Service has announced acquiescence or nonacquiescence and which concern substantive issues are included under the appropriate subject matter headings. Each digest gives a summary of the facts and holding, the applicable Code section, the Service position of acquiescence or nonacquiescence, a citation to the Bulletin announcing the Service position, and a citation to the Tax Court volume in which the decision is published.

Under the applicable section number in the Code Section Finding Lists, the abbreviation "Acq.", "Acq. in result" or "Nonacq." is followed by a citation to the Tax Court volume and to a digest.

If you want to verify the Service position on a particular adverse decision for which you know the name of the case, or if you want a citation for the decision, turn to the finding list of Decisions of the Tax Court, beginning on page 8. Decisions are listed in alphabetical order by case name, followed by the Tax Court citation. Acq., Acq. in result, or Nonacq., and a digest number.

Miscellaneous Bulletin Items

Under the appropriate topical headings, you will find digest of miscellaneous items published in the Bulletin, such as Executive Orders, Treasury Department Orders, Delegation Orders, etc. If a Code section is involved, you will also find the item listed under the applicable Code and Regulation sections in the 1954 Code Section Finding List.

If you do not know whether an item is published in the Bulletin, turn to the finding list of Miscellaneous items, beginning on page 10. Items not shown in other finding lists are listed here, with citations to the digest number. You will find the appropriate Bulletin citation at the end of the digest of the item.

Listing of Revenue Rulings and Revenue Procedures

The finding list of Revenue Rulings and Revenue Procedures, beginning on page 10, includes the number of every Revenue Ruling and Revenue Procedure that has been published in the Bulletin for 1953–1986, that is related to this particular Service, and that has not been superseded, revoked, or declared obsolete. A citation to a digest follows each Revenue Ruling and Revenue Procedure number.

Actions on Previously Published Revenue Rulings and Revenue Procedures

The finding list of Actions on Previously Published Revenue Rulings and Revenue Procedures, beginning on page 13, shows every Revenue Ruling and Revenue Procedure that has been modified, superseded, or otherwise acted upon, and includes a citation to the Bulletin where the later ruling or procedure may be found. Before citing a Revenue Ruling or Revenue Procedure, you should check this finding list to be sure you are citing the Service's current position.

Cumulative Supplements

Cumulative supplements to this Service are issued semiannually. After you have researched the basic volume, you should check the cumulative supplement for later developments. Information on items published in the Bulletin after the cutoff date for the basic volume is presented in the same format used in the basic volume, that is, in finding lists, digests, etc.

List of Abbreviations Used

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual
Acq.—Acquiescence

B—Individual
BE—Beneficiary
BK—Bank
B.T.A.—Board of Tax Appeals

C—Individual
C.B.—Cumulative Bulletin
CFR—Code of Federal Regulations
CI—City
COOP—Cooperative
Ct.D.—Court Decision
CY—County

D—Decedent
DC—Dummy Corporation
DE—Donee
Del. Order—Delegation Order
DISC—Domestic International Sales Corporation
DR—Donor

E—Estate
EE—Employee
E.O.—Executive Order
ER—Employer
ERISA—Employee Retirement Income Security Act
EX—Executor

F—Fiduciary
FC—Foreign Country
FICA—Federal Insurance Contributions Act
FISC—Foreign International Sales Company
FPH—Foreign Personal Holding Company
F.R.—Federal Register
FUTA—Federal Unemployment Tax Act
FX—Foreign Corporation

G.C.M.—Chief Counsel's Memorandum
GE—Grantee
GP—General Partner
GR—Grantor

IC—Insurance Company
I.R.B.—Internal Revenue Bulletin

LE—Lessee
LP—Limited Partner
LR—Lessor

M—Minor

Nonacq.—Nonacquiescence

O—Organization

P—Parent Corporation
PHC—Personal Holding Company
PO—Possession of the U.S.
PR—Partner
PRS—Partnership
PTE—Prohibited Transaction Exemption
Pub.L.—Public Law

REIT—Real Estate Investment Trust
Rev. Proc.—Revenue Procedure
Rev. Rul.—Revenue Ruling

S—Subsidiary
S.P.R.—Statement of Procedural Rules
Stat.—Statutes at Large

T—Target Corporation
T.C.—Tax Court
T.D.—Treasury Decision
TFE—Transferee
TFR—Transferor
T.I.R.—Technical Information Release
TP—Taxpayer
TR—Trust
TT—Trustee

U.S.C.—United States Code

X—Corporation

Y—Corporation

Z—Corporation

List of Topical Headings Used

Administrative

Abatement (See: Assessment; Refunds and credits)
2. Administration
4. Appeals
6. Assessment (See also: Limitation period)
8. Attorneys and agents

10. Bankruptcy and receiverships
14. Books and records

Claims (See: Limitation period; Refunds and credits)
16. Closing agreements
18. Collection of tax (See also: Levy; Liens)
Compromises (See: Offers in compromise)
20. Computation of tax
Conferences (See: Appeals)
Court decisions (See specific subject headings)
Credits (See: Refunds and credits)
22. Criminal prosecutions (See also: Fraud; Suits)

24. Deficiencies
Delegation of authority (See: Administration)
Disclosure of information (See: Publicity of information)

26. Elections (See also specific subject headings)
Enrollment (See: Attorneys and agents)
Evasion of tax (See: Fraud)
Evidence (See: Criminal prosecutions; Suits)
Examinations of records and returns (See: Books and records; Returns)
28. Extension of time

30. Forms (See also: Returns)
32. Fraud (See also: Criminal prosecutions; Penalties; Suits)

Information (See: Publicity of information; Returns)
Inspection of records and returns (See: Books and records; Returns)
Interest (See: Deficiencies; Overpayments)

Jeopardy assessments (See: Assessments)

38. Levy
40. Liability for tax
42. Liens
44. Limitation period

46. Offers in compromise
48. Officers and employees of the Service
Overassessments (See: Refunds and credits)
50. Overpayments

52. Payment of tax
54. Penalties
Period of limitation (See: Limitation period)
Powers of attorney (See: Attorneys and agents)
Practice before the Service (See: Attorneys and agents)
56. Publicity of information

Records (See: Books and records)
60. Refunds and credits
62. Regulations
Reproduction of forms and returns (See: Forms)
64. Returns (See also: Forms; Publicity of information)
66. Rulings

Seizure of property (See: Levy)
Statute of limitations (See: Limitation period)
68. Suits

70. Tax Court
Transferees (See: Liability for tax)

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Debts of decedent (See: Claims against estate)
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Disclaimer (See: Charitable, etc., transfers; Interests in property; Marital deduction)
Disclosure of information (See: **Administrative:** Publicity of information)
126. Dividends
128. Domicile
130. Dower and curtesy

Elections (See: **Administrative**)
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Finding Lists for Revenue Rulings, Revenue Procedures and other Items Except Public Laws, Treasury Decisions, and Tax Conventions

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§301.9000–1
Rev. Proc. 73–6, 68.12

Sec. 2001
Rev. Rul. 81–85, 60.23
Rev. Rul. 81–227, 134.69
Rev. Rul. 82–198, 168.110
Rev. Rul. 84–25, 60.20

§20.0–1
Rev. Rul. 80–209, 128.4

§20.0–2
Rev. Proc. 85–5, 66.3

§20.2001–1
Rev. Rul. 75–357, 152.12
Rev. Rul. 76–367, 52.31
Rev. Rul. 80–363, 128.1

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Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 97–34, 1981–2 C.B. 256

Sec. 2011
Pub.L. 414, 1956–1 C.B. 855
Pub.L. 85–866, 1958–3 C.B. 254
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 97–34, 1981–2 C.B. 256

§20.2011–1
T.D. 6296, 1958–2 C.B. 432
T.D. 6526, 1961–1 C.B. 402

§20.2011–2
T.D. 6296, 1958–2 C.B. 432
T.D. 6600, 1962–1 C.B. 164

Sec. 2012
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 97–34, 1981–2 C.B. 256

§20.2012–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7238, 1973–1 C.B. 544

Sec. 2013
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 99–514, 1986–3 C.B. (Vol. 1)

§20.2013–1
T.D. 6296, 1958–2 C.B. 432

§20.2013–2
T.D. 6296, 1958–2 C.B. 432
T.D. 7296, 1974–1 C.B. 255

§20.2013–3
T.D. 6296, 1958–2 C.B. 432
T.D. 7296, 1974–1 C.B. 255

§20.2013–4
T.D. 6296, 1958–2 C.B. 432
T.D. 7296, 1974–1 C.B. 255

§20.2013–5
T.D. 6296, 1958–2 C.B. 432

§20.2013–6
T.D. 6296, 1958–2 C.B. 432

Sec. 2014
Pub.L. 86–175, 1959–2 C.B. 686
Pub.L. 89–809, 1966–2 C.B. 656
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1

§20.2014–1
T.D. 6296, 1958–2 C.B. 432
T.D. 6526, 1961–1 C.B. 402
T.D. 6600, 1962–1 C.B. 164
T.D. 7296, 1974–1 C.B. 255

§20.2014–2
T.D. 6296, 1958–2 C.B. 432
T.D. 6600, 1962–1 C.B. 164
T.D. 7296, 1974–1 C.B. 255

§20.2014–3
T.D. 6296, 1958–2 C.B. 432
T.D. 6600, 1962–1 C.B. 164
T.D. 7296, 1974–1 C.B. 255

§20.2014–4
T.D. 6296, 1958–2 C.B. 432
T.D. 6742, 1964–2 C.B. 340
T.D. 7296, 1974–1 C.B. 255

§20.2014–5
T.D. 6296, 1958–2 C.B. 432

§20.2014–6
T.D. 6296, 1958–2 C.B. 432

§20.2014–7
T.D. 6600, 1962–1 C.B. 164

Sec. 2015
Pub.L. 85–866, 1958–3 C.B. 254

§20.2015–1
T.D. 6296, 1958–2 C.B. 432
T.D. 6526, 1961–1 C.B. 402
T.D. 7296, 1974–1 C.B. 255

Sec. 2016
Pub.L. 94–455, 1976–3 C.B. 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1

§20.2016–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2031
Pub.L. 87–834, 1962–3 C.B. 111
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1

§20.2031–1
T.D. 6296, 1958–2 C.B. 432
T.D. 6684, 1963–2 C.B. 411
T.D. 6826, 1965–2 C.B. 367

§20.2031–2
T.D. 6296, 1958–2 C.B. 432
T.D. 6826, 1965–2 C.B. 367
T.D. 7312, 1974–1 C.B. 277
T.D. 7327, 1974–2 C.B. 294
T.D. 7432, 1976–2 C.B. 264

§20.2031–3
T.D. 6296, 1958–2 C.B. 432

§20.2031–4
T.D. 6296, 1958–2 C.B. 432

§20.2031–5
T.D. 6296, 1958–2 C.B. 432

§20.2031–6
T.D. 6296, 1958–2 C.B. 432

§20.2031–7
T.D. 6296, 1958–2 C.B. 432
T.D. 7077, 1970–2 C.B. 183
T.D. 7955, 1984–1 C.B. 40

§20.2031–8
T.D. 6296, 1958–2 C.B. 432
T.D. 6680, 1963–2 C.B. 417
T.D. 7319, 1974–2 C.B. 297

§20.2031–9
T.D. 6296, 1958–2 C.B. 432

§20.2031–10
T.D. 7077, 1970–2 C.B. 183
T.D. 7955, 1984–1 C.B. 40

Sec. 2032
Pub.L. 91–614, 1971–1 C.B. 533
Pub.L. 98–369, 1984–3 C.B. (Vol. 1)
Pub.L. 99–514, 1986–3 C.B. (Vol. 1)

§20.2032–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7238, 1973–1 C.B. 544
T.D. 7955, 1984–1 C.B. 40

Sec. 2032A
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–472, 1978–2 C.B. 373
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1

Pub.L. 97–34, 1981–2 C.B. 256
Pub.L. 97–448, 1983–1 C.B. 451
Pub.L. 98–369, 1984–3 C.B. (Vol. 1)
Pub.L. 99–514, 1986–3 C.B. (Vol. 1)
Pub.L. 98–4, 1983–2 C.B. 296

§20.2032A–3
T.D. 7710, 1980–2 C.B. 254
T.D. 7786, 1981–2 C.B. 174

§20.2032A–4
T.D. 7710, 1980–2 C.B. 254

§20.2032A–8
T.D. 7710, 1980–2 C.B. 254
T.D. 7786, 1981–2 C.B. 174

§22.0
T.D. 7793, 1981–2 C.B. 63

Sec. 2033
Pub.L. 87–834, 1962–3 C.B. 111

§20.2033–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2034
Pub.L. 87–834, 1962–3 C.B. 111

§20.2034–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2035
Pub.L. 87–834, 1962–3 C.B. 111
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 96–222, 1980–1 C.B. 499
Pub.L. 97–34, 1981–2 C.B. 256
Pub.L. 97–448, 1983–1 C.B. 451

§20.2035–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2036
Pub.L. 87–834, 1962–3 C.B. 111
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1

§20.2036–1
T.D. 6296, 1958–2 C.B. 432
T.D. 6501, 1960–2 C.B. 271

Sec. 2037
Pub.L. 87–834, 1962–3 C.B. 111.

§20.2037–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2038
Pub.L. 86–141, 1959–2 C.B. 685
Pub.L. 87–834, 1962–3 C.B. 111
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1

§20.2038–1
T.D. 6296, 1958–2 C.B. 432
T.D. 6600, 1962–1 C.B. 164

Sec. 2039
Pub.L. 85–866, 1958–3 C.B. 254
Pub.L. 87–792, 1962–3 C.B. 89
Pub.L. 89–365, 1966–1 C.B. 377
Pub.L. 92–580, 1972–2 C.B. 703
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 96–222, 1980–1 C.B. 499
Pub.L. 97–34, 1981–2 C.B. 256
Pub.L. 97–248, 1982–2 C.B. 462
Pub.L. 97–448, 1983–1 C.B. 451
Pub.L. 98–369, 1984–3 C.B. (Vol. 1)
Pub.L. 99–514, 1986–3 C.B. (Vol. 1)

§20.2039–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7416, 1976–1 C.B. 274

§20.2039–1T
T.D. 8073, 1986–13 I.R.B. 4

§20.2039–2
T.D. 6296, 1958–2 C.B. 432
T.D. 6526, 1961–1 C.B. 402
T.D. 6666, 1963–2 C.B. 421
T.D. 7043, 1970–2 C.B. 22
T.D. 7416, 1976–1 C.B. 274
T.D. 7428, 1976–2 C.B. 160
T.D. 7562, 1978–2 C.B. 105
T.D. 7761, 1981–1 C.B. 459

§20.2039–3
T.D. 7761, 1981–1 C.B. 459

§20.2039–4
T.D. 7761, 1981–1 C.B. 459
T.D. 7956, 1984–1 C.B. 192

§20.2039–5
T.D. 7761, 1981–1 C.B. 459

Sec. 2040
Pub.L. 87–834, 1962–3 C.B. 111
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 96–222, 1980–1 C.B. 499
Pub.L. 97–34, 1981–2 C.B. 256

§20.2040–1
T.D. 6296, 1958–2 C.B. 432

§23.1
T.D. 7687, 1980–1 C.B. 198
T.D. 7731, 1980–2 C.B. 275

Sec. 2041
Pub.L. 87–834, 1962–3 C.B. 111
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1

§20.2041–1
T.D. 6296, 1958–2 C.B. 432
T.D. 6582, 1962–1 C.B. 177

§20.2041–2
T.D. 6296, 1958–2 C.B. 432

§20.2041–3
T.D. 6296, 1958–2 C.B. 432
T.D. 8095, 1986–35 I.R.B. 6

Sec. 2042

§20.2042–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7312, 1974–1 C.B. 277
T.D. 7623, 1979–1 C.B. 66

Sec. 2043
Pub.L. 98–369, 1984–3 C.B. (Vol. 1)

§20.2043–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2044
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 97–34, 1981–2 C.B. 256
Pub.L. 97–448, 1983–1 C.B. 451

§20.2044–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2045
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 97–34, 1981–2 C.B. 256

Sec. 2046
Pub.L. 97–34, 1981–2 C.B. 256

§20.2046–1
T.D. 8095, 1986–35 I.R.B. 6

Sec. 2051
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1

§20.2051–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2052
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1

§20.2052–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2053
Pub.L. 85–866, 1958–3 C.B. 254
Pub.L. 86–175, 1959–2 C.B. 686
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 98–369, 1984–3 C.B. (Vol. 1)

§20.2053–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7238, 1973–1 C.B. 544

§20.2053–2
T.D. 6296, 1958–2 C.B. 432
T.D. 6666, 1963–2 C.B. 421

§20.2053–3
T.D. 6296, 1958–2 C.B. 432
T.D. 6826, 1965–2 C.B. 367
T.D. 7612, 1979–1 C.B. 307

§20.2053–4
T.D. 6296, 1958–2 C.B. 432

§20.2053–6
T.D. 6296, 1958–2 C.B. 432

§20.2053–7
T.D. 6296, 1958–2 C.B. 432

§20.2053–8
T.D. 6296, 1958–2 C.B. 432

§20.2053–9
T.D. 6296, 1958–2 C.B. 432
T.D. 6526, 1961–1 C.B. 402
T.D. 6666, 1963–2 C.B. 421

§20.2053–10
T.D. 6600, 1962–1 C.B. 164

Sec. 2054

§20.2054–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2055
Pub.L. 1011, 1956–2 C.B. 1206
Pub.L. 88–554, 1964–2 C.B. 612
Pub.L. 91–172, 1969–3 C.B. 45
Pub.L. 91–614, 1971–1 C.B. 533
Pub.L. 93–483, 1974–2 C.B. 447
Pub.L. 94–129, 1975–2 C.B. 531
Pub.L. 94–168, 1976–1 C.B. 502
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 96–222, 1980–1 C.B. 499
Pub.L. 96–605, 1980–2 C.B. 702
Pub.L. 97–34, 1981–2 C.B. 256
Pub.L. 97–35, 1981–2 C.B. 528
Pub.L. 97–248, 1982–2 C.B. 462
Pub.L. 97–473, 1983–1 C.B. 510
Pub.L. 98–369, 1984–3 C.B. (Vol. 1)
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§20.2055–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7318, 1974–2 C.B. 305

§20.2055–2
T.D. 6296, 1958–2 C.B. 432
T.D. 7238, 1973–1 C.B. 544
T.D. 7318, 1974–2 C.B. 305
T.D. 7340, 1975–1 C.B. 81
T.D. 7955, 1984–1 C.B. 40
T.D. 7957, 1984–1 C.B. 195
T.D. 8069, 1986–9 I.R.B. 4
T.D. 8095, 1986–35 I.R.B. 6

§20.2055–3
T.D. 6296, 1958–2 C.B. 432

§20.2055–4
T.D. 6296, 1958–2 C.B. 432
T.D. 7318, 1974–2 C.B. 305

§20.2055–5
T.D. 7318, 1974–2 C.B. 305

§24.1
T.D. 7393, 1976–1 C.B. 283

Sec. 2056
Pub.L. 89–621, 1966–2 C.B. 604
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 97–34, 1981–2 C.B. 256
Pub.L. 97–448, 1983–1 C.B. 451
Pub.L. 98–369, 1984–3 C.B. (Vol. 1)

§20.2056(a)–1
T.D. 6296, 1958–2 C.B. 432
T.D. 8095, 1986–35 I.R.B. 6

§20.2056(a)–2
T.D. 6296, 1958–2 C.B. 432

§20.2056(b)–1
T.D. 6296, 1958–2 C.B. 432
T.D. 8095, 1986–35 I.R.B. 6

§20.2056(b)–2
T.D. 6296, 1958–2 C.B. 432

§20.2056(b)–3
T.D. 6296, 1958–2 C.B. 432

§20.2056(b)–4
T.D. 6296, 1958–2 C.B. 432

§20.2056(b)–5
T.D. 6296, 1958–2 C.B. 432

§20.2056(b)–6
T.D. 6296, 1958–2 C.B. 432

§20.2056(c)–1
T.D. 6296, 1958–2 C.B. 432

§20.2056(c)–2
T.D. 6296, 1958–2 C.B. 432

§20.2056(d)–1
T.D. 6296, 1958–2 C.B. 432
T.D. 8095, 1986–35 I.R.B. 6

§20.2056(d)–2
T.D. 8095, 1986–35 I.R.B. 6

§20.2056(e)–1
T.D. 6296, 1958–2 C.B. 432

§20.2056(e)–2
T.D. 6296, 1958–2 C.B. 432

§20.2056(e)–3
T.D. 6296, 1958–2 C.B. 432

§22.2056–1
T.D. 7833, 1982–2 C.B. 217

Sec. 2057
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 97–34, 1981–2 C.B. 256
Pub.L. 99–514, 1986–3 C.B. (Vol. 1)

Sec. 2101
Pub.L. 89–809, 1966–2 C.B. 656
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1

§20.2101–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7296, 1974–1 C.B. 255

Sec. 2102
Pub.L. 89–809, 1966–2 C.B. 656
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1

§20.2102–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7296, 1974–1 C.B. 255

Sec. 2103

§20.2103–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7296, 1974–1 C.B. 255

Sec. 2104
Pub.L. 85–866, 1958–3 C.B. 254
Pub.L. 89–809, 1966–2 C.B. 656
Pub.L. 91–172, 1969–3 C.B. 90
Pub.L. 93–17, 1973–1 C.B. 712
Pub.L. 93–625, 1975–1 C.B. 510
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1

§20.2104–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7296, 1974–1 C.B. 255
T.D. 7321, 1974–2 C.B. 322

Sec. 2105
Pub.L. 89–809, 1966–2 C.B. 656
Pub.L. 98–369, 1984–3 C.B. (Vol. 1)

§20.2105–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7296, 1974–1 C.B. 255
T.D. 7321, 1974–2 C.B. 322

Sec. 2106
Pub.L. 86–779, 1960–2 C.B. 709
Pub.L. 89–809, 1966–2 C.B. 656
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 97–473, 1983–1 C.B. 510
Pub.L. 99–514, 1986–3 C.B. (Vol. 1)

§20.2106–1
T.D. 6296, 1958–2 C.B. 432
T.D. 6526, 1961–1 C.B. 402
T.D. 7296, 1974–1 C.B. 255
T.D. 7318, 1974–2 C.B. 305

§20.2106–2
T.D. 6296, 1958–2 C.B. 432
T.D. 7296, 1974–1 C.B. 255

Sec. 2107
Pub.L. 89–809, 1966–2 C.B. 656
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1

§20.2107–1
T.D. 7296, 1974–1 C.B. 255

Sec. 2108
Pub.L. 89–809, 1966–2 C.B. 656
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1

Sec. 2201
Pub.L. 91–235, 1970–1 C.B. 360
Pub.L. 93–597, 1975–1 C.B. 495
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1

§20.2201–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2202
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1

§20.2202–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2203

§20.2203–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2204
Pub.L. 91–614, 1971–1 C.B. 533
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 97–34, 1981–2 C.B. 256

§20.2204–1
T.D. 6296, 1958–2 C.B. 432
T.D. 7238, 1973–1 C.B. 544
T.D. 7941, 1984–1 C.B. 251

§20.2204–2
T.D. 7238, 1973–1 C.B. 544

§20.2204–3
T.D. 7941, 1984–1 C.B. 251

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§20.2205–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2206
Pub.L. 94–455, 1976–3 C.B. 1

§20.2206–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2207
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1

§20.2207–1
T.D. 6296, 1958–2 C.B. 432

Sec. 2207A
Pub.L. 97–34, 1981–2 C.B. 256

Sec. 2208
Pub.L. 85–866, 1958–3 C.B. 254

§20.2208–1
T.D. 6526, 1961–1 C.B. 402

Sec. 2209
Pub.L. 86–779, 1960–2 C.B. 709

§20.2209–1
T.D. 6526, 1961–1 C.B. 402

Sec. 2210
Pub.L. 98–369, 1984–3 C.B. (Vol. 1)
Pub.L. 99–514, 1986–3 C.B. (Vol. 1)

Sec. 2501
Pub.L. 85–866, 1958–3 C.B. 254
Pub.L. 86–779, 1960–2 C.B. 709
Pub.L. 89–809, 1966–2 C.B. 656
Pub.L. 91–614, 1971–1 C.B. 533
Pub.L. 93–625, 1975–1 C.B. 510
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 97–34, 1981–2 C.B. 256
Pub.L. 97–473, 1983–1 C.B. 510
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§25.0–1
T.D. 7910, 1983–2 C.B. 161

§25.2501–1
T.D. 6334, 1958–2 C.B. 627
T.D. 6542, 1961–1 C.B. 420
T.D. 7238, 1973–1 C.B. 544
T.D. 7296, 1974–1 C.B. 255
T.D. 7671, 1980–1 C.B. 16
T.D. 7910, 1983–2 C.B. 161

Sec. 2502
Pub.L. 91–614, 1971–1 C.B. 533
Pub.L. 94–455, 1976–3 C.B. (Vol. 1) 1
Pub.L. 97–34, 1981–2 C.B. 256

§25.2502–1
T.D. 6334, 1958–2 C.B. 627
T.D. 7238, 1973–1 C.B. 544
T.D. 7910, 1983–2 C.B. 161

§25.2502–2
T.D. 6334, 1958–2 C.B. 627
T.D. 7238, 1973–1 C.B. 544
T.D. 7910, 1983–2 C.B. 161

Sec. 2503
Pub.L. 91–614, 1971–1 C.B. 533
Pub.L. 95–600, 1978–3 C.B. (Vol. 1) 1
Pub.L. 97–34, 1981–2 C.B. 256
Pub.L. 99–514, 1986–3 C.B. (Vol. 1)

§25.2503–1
T.D. 6334, 1958–2 C.B. 627
T.D. 7238, 1973–1 C.B. 544
T.D. 7910, 1983–2 C.B. 161

§25.2503–2
T.D. 6334, 1958–2 C.B. 627
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  - H. Rept. 97–312, 1982–1 C.B. 320
- 97–248 (H.R. 4961), 1982–2 C.B. 462
    - (Tax Equity and Fiscal Responsibility Act of 1982)
    - (Federal Supplemental Compensation Act of 1982)
    - (Tax Treatment of Partnership Items Act of 1982)
  - Conf. Rept. 97–760, 1982–2 C.B. 600
- 97–362 (H.R. 4717), 1983–1 C.B. 367
    - (Miscellaneous Revenue Act of 1982)
  - H. Rept. 97–405, 1983–1 C.B. 371
  - Conf. Rept. 97–929, 1983–1 C.B. 377
- 97–437 (H.R. 6519), 1983–1 C.B. 450
- 97–448 (H.R. 6056), 1983–1 C.B. 451
    - (Technical Corrections Act of 1982)
  - S. Rept. 97–592, 1983–1 C.B. 475
  - Conf. Rept. 97–986, 1983–1 C.B. 498
- 97–473 (H.R. 5470), 1983–1 C.B. 510
    - (Periodic Payment Settlement Act of 1982)
    - (Indian Tribal Government Tax Status Act of 1982)
  - S. Rept. 97–646, 1983–1 C.B. 514
  - Conf. Rept. 97–984, 1983–1 C.B. 522
- 98–4 (H.R. 1296), 1983–2 C.B. 296
    - (Payment-in-Kind Tax Treatment Act of 1983)
  - H. Rept. 98-14, 1983–2 C.B. 297
- 98–369 (H.R. 4170), 1984–3 C.B. (Vol. 1) 1
    - (Deficit Reduction Act of 1984)
  - H. Rept. 98–861, 1984–3 C.B. (Vol. 2) 1

H. Rept. 98–133 (Part 2), 1984–3 C.B. (Vol. 2) 555

H. Concurrent Resolution 328, 1984–3 C.B. (Vol. 2) 577

99–514 (H.R. 3838), 1986–3 C.B. (Vol. 1)

(Tax Reform Act of 1986)

H. Rept. 99–426, 1986–3 C.B. (Vol. 2) 1

S. Rept. 99–313, 1986–3 C.B. (Vol. 3) 1

Conf. Rept. 99–841, 1986–3 C.B. (Vol. 4) 1

Digest of Revenue Rulings, Revenue Procedures, and other published items except Public Laws, Treasury Decisions, and Tax Conventions

Abatement

(See: Assessment; Refunds and credits)

ADMINISTRATIVE

Administration

2.1 **Acting Commissioner.** Effective May 1, 1973, Deputy Commissioner Raymond F. Harless is designated to serve as Acting Commissioner of Internal Revenue and to perform all functions authorized to be performed by the Commissioner of Internal Revenue.

Treas. Dept. Order 150–81, 1973–1 C.B. 846.

2.2 **Advisory committees.** The following advisory committees are renewed or reestablished:

Advisory Group to the Commissioner of Internal Revenue, 1977–2 C.B. 529.

Art Advisory Panel of the Commissioner of Internal Revenue, 1977–2 C.B. 529.

Chief Counsel's Advisory Committee on Rules of Professional Conduct, 1975–1 C.B. 635.

Small Business Advisory Committee to the Commissioner of Internal Revenue, 1975–1 C.B. 757.

2.3 **Approval of regulations.** The authority delegated to the Assistant Secretary (Tax Policy) to approve regulations relating to the internal revenue laws is redelegated to the Deputy Assistant Secretary (Tax Legislation), the Tax Legislative Counsel, and the Deputy Tax Legislative Counsel. Treas. Dept. Order No. 190–1 rescinded.

Treas. Dept. Order 190–1 (Rev.), 1977–1 C.B. 591.

2.4 **Approval of regulations.** The authority to approve regulations pertaining to internal revenue laws is delegated to the General Counsel.

Treas. Dept. Order 190–4, 1978–1 C.B. 598

2.5 **Assistant Commissioner (Administration).** The office of Assistant Commissioner (Administration) in the National Office has been abolished and an office of Administrative Assistant to the Commissioner has been established.

Treas. Dept. Order 150–44, 1956–2 C.B. 1368.

2.6 **Assistant Commissioner (Planning).** The Office of Assistant Commissioner (Planning) in the National Office has been redesignated as the Office of the Assistant to the Commissioner.

Treas. Dept. Order 150–43, 1956–2 C.B. 1367.

2.7 **Assistant Secretary (Tax Policy); final determination.** The authority to make final determinations on issues of tax policy is delegated to the Assistant Secretary (Tax Policy). Treas. Dept. Orders 150–41 and 170–3 superseded.

Treas. Dept. Order No. 111–2, 1981–1 C.B. 698.

2.8 **Chief Counsel; Alaska office.** The Chief Counsel will open an office in Alaska to be known as the District Counsel, Anchorage.

Notice 85–13, 1985–31 I.R.B. 22.

2.9 **Claims arising in the administration of Internal Revenue laws.** Functions of the Secretary of the Treasury and the General Counsel for the Department of the Treasury have been transferred to the Commissioner of Internal Revenue and to the Chief Counsel for the Internal Revenue Service, insofar as claims arising in the administration of the revenue laws are concerned.

Treas. Dept. Order 150–60, 1964–2 C.B. 900.

2.10 **Consolidation of regions.** The New York and Northeast Internal Revenue Regions are consolidated and redesignated as the North Atlantic Region, effective January 4, 1965. Treas. Dept. Orders 150–58 and 150–59 amended.

Treas. Dept. Order 150–65, 1965–2 C.B. 861.

2.11 **Delegations of authority.** The following documents deal with delegations of authority with respect to the Service:

Del. Order—Citation—Subject

3 (Rev. 3), 1978–2 C.B. 463, Designation to act as Commissioner.

4 (Rev. 15), 1984–37 I.R.B. 12, Summonses.

5 (Rev. 10), 1982–1 C.B. 332, Emergency succession to Commissioner.

11 (Rev. 15), 1985–1 C.B. 423, Offers in compromise.

20, 1956–1 C.B. 1013, Extension of time to pay taxes.

22 Revoked, 1960–1 C.B. 860, Extension of time to file returns.

23 (Rev. 7), 1978–2 C.B. 468, Tort claims; Service employees' claims.

24, 1956–1 C.B. 1015, Records.

32 (Rev. 1), Revoked, 1983–2 C.B. 406.

36 (Rev. 1), Revoked, 1983–2 C.B. 407.

37 (Revised), 1957–2 C.B. 1089, Oaths and affirmations.

40 (Rev. 2), 1979–2 C.B. 481, Credits and refunds.

42 (Rev. 18), 1983–1 C.B. 529, Consents fixing period of limitations.

51 (Rev. 6), 1982–36 I.R.B. 10, Proofs of claim in insolvency proceedings.

57 (Rev. 6), 1983–2 C.B. 407, Notice of additional inspection of books.

58, 1958–1 C.B. 680, Supervision of Regional Commissioners.

60 (Rev. 5), 1979-2 C.B. 482, Tax Court cases.

65, 1958–2 C.B. 1093, Settlements.

66 (Rev. 10), 1980–1 C.B. 571, Settlements; protested and Tax Court cases.

67 (Rev. 15), 1981–1 C.B. 609, Commissioner's functions.

75, Revoked, 1979–2 C.B. 484, Offers in compromise.

77 (Rev. 18), 1985–1 C.B. 424, Deficiency notices.

83 (Rev. 5), 1974–2 C.B. 464, Inspection of returns, returns or copies for use in grand jury proceedings and litigation, inquiries concerning investigation of prospective jurors in Federal litigation.

86 (Rev. 5), 1976–1 C.B. 539, Inspection of returns; disclosure of non-tax crime information.

96 (Rev. 6), 1982–1 C.B. 336, Application of rulings without retroactive effect.

97 (Rev. 23), 1984–52 I.R.B. 63, Closing agreements.

100 (Rev. 3), 1982–2 C.B. 338, Furnishing special statistical studies.

111 (Rev. 3), 1977–2 C.B. 499, Collection; Federal Claims Collection Act of 1966.

114 (Rev. 4), 1985–1 C.B. 424, Tax treaties; "competent or taxation authority"

116 (Rev. 5), 1982–1 C.B. 341, Extension of time, estate tax returns.

120, Revoked, 1974–2 C.B. 464, Settlements of protested and Tax Court cases.

134, 1973–1 C.B. 745, Executor's liability, discharge, closing letters.

136 (Rev. 4), 1982–1 C.B. 341, Signing of agreements regarding charitable deductions.

144 (Rev. 1), 1982–1 C.B. 342, Transfer certificates.

149, Revoked, 1980–1 C.B. 575, Levy on property held by third party.

152 (Rev. 1), 1980–1 C.B. 576. Collections from delinquent Internal Revenue officers and employees.

154 (Rev. 4), 1985–1 C.B. 425, Decision on reports of refunds and credits to Joint Committee.

155 (Rev. 2), 1982–2 C.B. 746, Settlement recommendation letters; Department of Justice.

156 (Rev. 6), 1985–43 I.R.B. 18, Disclosure of returns and return information.

157 (Rev. 3), 1982–1 C.B. 350, Seizure and forfeiture of personal property.

160 (Rev. 3), 1982–1 C.B. 350, Jeopardy assessment cases.

162 (Rev. 2), 1982–2 C.B. 747, Practice before the Service.

165 (Rev. 3), 1982–1 C.B. 350, Appeals; Freedom of Information Act.

169 (Rev. 1), 1982–2 C.B. 749, Determinations; immunity orders.

170, 1978–2 C.B. 485, Assistant Regional Commissioner (Compliance), Midwest Region.

171 (Rev. 1), 1982–2 C.B. 747, Authority of Chief Counsel, Regional Counsels, and Regional Directors of Appeals.

179, 1979–2 C.B 493, Appeals Coordinated Issues.

180, 1979–2 C.B. 493, Request of Customer Financial Records.

182 (Rev. 3), 1984–1 C.B. 328, Authority to execute returns.

190, 1982–1 C.B. 350, Transfer of Technical Appeals functions to Chief Counsel.

191, 1982–1 C.B. 352, Levy on property in hands of third parties.

196, 1982–2 C.B. 748, Authority to file tax liens.

197, 1982–2 C.B. 748, Director of Practice; office transferred to Internal Revenue Service.

198, 1983–1 C.B. 531, Affixing official seal; certifying authenticity of documents.

204, 1984–1 C.B. 328, Rewards for certain information.

213, 1985–46 I.R.B. 35, Authority to issue formal document requests.

2.12 **Delegations of authority; collections from delinquent officers and employees.** Functions relating to officers and employees of the Treasury who fail to account for and pay over any amounts collected or received in connection with the internal revenue laws are transferred to the Commissioner. Treas. Dept. Order 150-69 revised.

Treas. Dept. Order 150–69, 1980–1 C.B. 717.

2.13 **Delegations of authority; effect of Code revision.** Delegations of authority which were continued in effect under the 1954 Code are amended to include any additional or revised functions created or authorized by the Code which are essential to the performance of or directly related to the functions originally delegated.

Treas. Dept. Order 150–36, 1954–2 C.B. 733.

2.14 **Digest of public laws.** A brief explanation is given of the provisions of the public laws pertaining to internal revenue matters enacted by Congress.

Rev. Rul. 213, 1953–2 C.B. 494; 1955–2 C.B. 737; 1956–2 C.B. 1128; 1957–2 C.B. 1052; 1958–3 C.B. 3; 1959–2 C.B. 641; 1960–2 C.B. 656; 1961–2 C.B. 293; 1962–3 C.B. 3; 1963–2 C.B. 693.

2.15 Director of Practice; office transferred to Treasury. The Office of the Director of Practice has been transferred from the Internal Revenue Service to the Office of the Secretary of the Treasury to be under the immediate supervision of the General Counsel.

Treas. Dept. Order 175–1, 1963–2 C.B. 731.

2.16 Distraint sale more than five miles from estate seized. The function vested in the Commissioner of Internal Revenue by section 3701(c) of the 1939 Code to authorize a distraint sale of real estate at a place more than five miles distant from the estate seized is delegated to the District Director of Internal Revenue in whose district the estate is situated.

Comm. Reorg. Order 33, 1954–2 C.B. 734.

2.17 Establishment of certain offices in the National Office. Certain offices continue as they existed prior to this order. The Appeals Division and the Corporation and Individual Tax Divisions are transferred to the Chief Counsel.

Treas. Dept. Order 150–02, 1986–19 I.R.B. 12.

2.18 Establishment of new office. There has been established in the National Office of the Internal Revenue Service the office of Assistant Commissioner of Internal Revenue (Planning and Research).

Treas. Dept. Order 150–46, 1958–1 C.B. 679.

2.19 Establishment of new office. There has been established in the National Office of the Internal Revenue Service the Office of Assistant Commissioner (Data Services).

Treas. Dept. Order 150–85, 1976–2 C.B. 678.

2.20 Establishment of new office; redesignation of another. There has been established in the National Office the Office of Assistant Commissioner (Data Processing) and the office of Assistant Commissioner (Operations) has been redesignated as Assistant Commissioner (Compliance).

Treas. Dept. Order 150–56, 1961–2 C.B. 544.

2.21 Establishment of two offices in the National Office. The office of Administrative Assistant to the Commissioner has been abolished. The offices of Assistant Commissioner of Internal Revenue (Administration) and Assistant to the Commissioner have been created, effective September 6, 1960.

Treas. Dept. Order 150–52, 1960–2 C.B. 917.

2.22 Fees and mileage allowances; witnesses summoned before the Service. The Revenue Service will pay witness fees and mileage allowances to witnesses who are formally summoned to appear before Service personnel for purposes of giving testimony or producing records. §301.7602–1. (Sec. 7602, '54 Code.)

Rev. Rul. 68–645, 1968–2 C.B. 599.

2.23 Informants reward; new form. A new Form 211, Public Voucher for Reward for Original Information, has been prescribed for use by informants in applying for a reward. (Sec. 3792, '39 Code; Sec. 7623, '54 Code.)

Rev. Rul. 140, 1953–2 C.B. 470.

2.24 Inspection of returns. The functions of the Secretary of the Treasury prescribed by any Treasury Decision, relating to the granting of permission to inspect returns to any agency of the Executive Branch of the United States Government, have been delegated to the Commissioner of the Internal Revenue. Such functions may be exercised by any officer or employee of the Revenue Service who is so authorized by the Commissioner.

Treas. Dept. Order 150–35 (Rev. 1), 1959–1 C.B. 767.

2.25 Internal Revenue Districts. A complete list of Internal Revenue Districts is provided, including those districts that comprise an entire state and districts within certain states.

Treas. Dept. Order 150–01, 1986–19 I.R.B. 10.

2.26 Internal Revenue Districts; Albany and Buffalo. A realignment of the boundaries of the Internal Revenue Districts of Albany and Buffalo has been authorized, effective January 1, 1965. The counties, within the State of New York, designated for each district are set forth. Treas. Dept. Order 150–58 amended.

Treas. Dept. Order 150–63, 1964–2 C.B. 901.

2.27 Internal Revenue Districts; Anchorage. Effective January 1, 1961, the area comprising the State of Alaska was removed from the Internal Revenue District, Seattle. An Internal Revenue district to be known as Internal Revenue District, Anchorage, for the area comprising the State of Alaska, and an office of the District Director, Anchorage, were established in the San Francisco Region for all purposes authorized by the internal revenue laws.

Treas. Dept. Order 150–53, 1961–1 C.B. 859.

2.28 Internal Revenue Districts; Cincinnati and Cleveland. The Columbus and Toledo Districts have been abolished. The boundaries of the Cincinnati District have been extended to include the former Columbus District; the boundaries of the Cleveland District have been extended to include the former Toledo District.

Treas. Dept. Order 150–50, 1960–1 C.B. 859.

2.29 Internal Revenue Districts; Foreign Operations; created The Foreign Operations Internal Revenue District has been created to replace the Office of International Operations, Internal Revenue Service.

Treas. Dept. Order 150–96, 1982–1 C.B. 511.

2.30 Internal Revenue Districts; Manhattan. Effective January 1, 1960, the Internal Revenue Districts of Lower Manhattan and Upper Manhattan, and the District Directors' offices thereof, are abolished; the Internal Revenue District, Manhattan, and the office of the District Director thereof, is established.

Treas. Dept. Order 150–49, 1960–1 C.B. 859.

2.31 Internal Revenue Districts; Nevada; transfer to Las Vegas. The headquarters office of the Internal Revenue District for the State of Nevada is transferred from Reno, Nevada to Las Vegas, Nevada.

Treas. Dept. Order 150–106, 1985–31 I.R.B. 24.

2.32 Internal Revenue Districts; Sacramento, San Jose, and Laguna Niguel created. The Sacramento, San Jose, and Laguna Niguel Internal Revenue Districts have been created and the Los Angeles and San Francisco Districts have been modified.

Treas. Dept. Order 150–39, 1983–1 C.B. 801.

2.33 International enforcement program; examiners at district offices. Effective March 28, 1965, examiners of international issues assigned to the Office of International Operations stationed at district offices will be under the jurisdiction of district offices. Such examiners will be located in one or two districts in each region from which they will provide assistance in international tax matters to all district offices. However, the Office of International Operations will continue to provide district offices with specialized services and with assistance upon request. Rev. Proc. 62–37 modified. (Sec. 601.105, S.P.R.)

Rev. Proc. 62–37, 1962–2 C.B. 537; Rev. Proc. 65–11, 1965–1 C.B. 751.

2.34 International Operations Division established. An International Operations Division has been established in the Philadelphia Region, Baltimore District, with headquarters in Washington, D. C., to centralize international operating responsibilities. Amended to announce the transfer of the office from the Baltimore District to the National Office, effective May 1, 1956.

Rev. Proc. 55–2, 1955–2 C.B. 898; Rev. Proc. 56–18, 1956–1 C.B. 1043.

2.35 Issuance of immunity orders. Authority has been delegated to the Commissioner of Internal Revenue to make determinations and to issue the orders to compel the testimony of an individual under a grant of immunity in any proceeding arising under the laws administered by the Service.

Treas. Dept. Order No. 150–88, 1978–1 C.B. 598.

2.36 Liaison with Federal intelligence agencies. Review and approval of agreements and arrangements for support and assistance between Treasury agencies and the Central Intelligence Agency and other Federal intelligence agencies except the Federal Bureau of Investigation is described. Treas. Dept. Order No. 240 rescinded.

Treas. Dept. Order 240 (Rev. 1), 1978–2 C.B. 568

2.37 Office of Industrial Economics; transferred. The functions of the Office of Industrial Economics is transferred from the Office of Assistant Secretary (Tax Policy) to the Commissioner of the Internal Revenue Service. Treas. Dept. Order 175–5 superseded and Treas Dept. Order 111–1 recinded.

Treas. Dept. Order 150–93, 1981–2 C.B. 732.

2.38 Organization and functions of the Service. A new Statement of Organization and Functions of the Internal Revenue Service effective March 25, 1974, describes each division and branch in the National Office and in field organizations; the Statements published in 1972–2 C.B. 836, 1973–2 C.B. 503, and 1973–2 C.B. 504 are superseded.

1974–1 C.B. 440.

2.39 Panama Canal Zone, Puerto Rico, Virgin Islands. The Panama Canal Zone, Puerto Rico, and the Virgin Islands are removed from their present Districts and Regions. Administration of the Internal Revenue laws therein shall be provided by the Commissioner.

Treas. Dept. Order 150–42, 1956–2 C.B. 1367.

2.40 Political parties; appreciated property; gifts; policy statement. Policy statement concerning tax treatment of political committees and parties, contributions of appreciated property, and filing of returns.

Announcement 73–84, 1973–2 C.B. 461.

2.41 Principles of tax administration. General principles of tax administration as they relate to the functions and responsibilities of both the Internal Revenue Service and its employees are set forth.

Rev. Proc. 64–22, 1964–1 (Part 1) C.B. 689.

2.42 Publication standards; revenue rulings and revenue procedures. The objective of, and standards for, publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin are revised to reflect the reorganization of the Internal Revenue Service in accordance with Treasury Department Order No. 150–95, effective March 21, 1982, under Delegation Order No. 190, the establishment of the office of the Associate Chief Counsel (International), and the responsiility of the Assistant Commissioner (Support nd Services) for publishing the Internal Revenue Bulletin. Rev. Proc. 78–24 superseded. (Sec. 01.601, S.P.R.)

Rev. Proc. 86–15, 1986–11 I.R.B. 26.

.43 Recognition of persons employed by axpayers. The extent to which examining offiers and other employees of the Revenue Service nay accord recognition to persons employed by axpayers in connection with Federal tax matters nd discuss matters with such persons are outined. Rev. Proc. 59–4 superseded. (Sec. 601.501, S.P.R.)

Rev. Proc. 68–29, 1968–2 C.B. 913.

2.44 Redesignation of office; transfer of Division. The Office of Assistant Commissioner (Administration) is redesignated as the Office of Assistant Commissioner (Resources Management) and the Office of Assistant Commissioner (Accounts, Collection, and Taxpayer Service) is redesignated as the Office of Assistant Commissioner (Taxpayer Service and Returns Processing); the Collection Division is transferred to the Office of Assistant Commissioner (Compliance) and the Disclosure Operations Division and Tax Administration Advisory Services Division are transferred to the Office of Assistant Commissioner (Taxpayer Service and Returns Processing), effective upon such date as the Commissioner may determine.

Treas. Dept. Order No. 150–90, 1978–1 C.B. 598.

2.45 Redesignation of office; transfer of functions. The Office of Assistant Commissioner (Data Processing) is redesignated as the Office of Assistant Commissioner (Accounts, Collection, and Taxpayer Service); approval is given to the transfer of functions from the Office of Assistant Commissioner (Compliance) to the Office of Assistant Commissioner (Accounts, Collection, and Taxpayer Service) of the Collection Division.

Treas. Dept. Order 150–74, 1971–2 C.B. 579.

2.46 Regional and district field offices. A modified realignment of the Internal Revenue Service field organization has been approved by the Secretary of the Treasury. Treas. Dept. Order 150–57 revoked. Modified to redesignate Internal Revenue regions and offices of the Regional Commissioners. Amended by Treas. Dept. Orders 150–63 and 150–65.

Treas. Dept. Order 150–58, 1963–1 C.B. 427; Treas. Dept. Order 150–59, 1964–1 (Part 1) C.B. 605.

2.47 Regulations title heading; revised. Effective January 1, 1961, the regulations under both the 1939 and 1954 Codes were redesignated under the heading, "Title 26 — Internal Revenue", in the Code of Federal Regulations. The regulations under tax conventions were transferred to subchapter G and redesignated.

1961–1 C.B. 863.

2.48 Regulations; reference to 1939 Code. Any reference in any regulation or other executive document to any provision of the Internal Revenue Code of 1939 shall be deemed also to refer to the corresponding provision of the Internal Revenue Code of 1954 unless inconsistent or otherwise inappropriate.

E.O. 10574, 1954–2 C.B. 732.

2.49 Reopening closed cases. Rules are set forth governing the reopening of cases closed by district offices or service centers. Certain types of cases in which a reconsideration or taxpayer contact will not be considered a reopening are listed. Rev. Proc. 83–19 superseded. §301.7605–1. (Sec. 601.105, S.P.R.; Sec. 7605, '54 Code.)

Rev. Proc. 85–13, 1985–1 C.B. 514.

2.50 Reorganization; Internal Revenue Service National Office; functions; Chief Counsel. The Secretary of the Treasury has reorganized the Internal Revenue Service National Office and transferred certain functions to Chief Counsel.

Treas. Dept. Order 150–95, 1982–1 C.B. 510.

2.51 Restrictions on telephone monitoring. Authority has been delegated to the Commissioner of Internal Revenue to represent the interests of the Treasury Department before the New Jersey Board of Public Utility Commissioners in a proceeding involving review of the standards for restrictions on telephone monitoring.

Treas. Dept. Order 247, 1977–1 C.B. 591.

2.52 Seal of the Treasury Department. The Commissioner and certain officers of the Revenue Service have been authorized to affix the Seal of the Treasury Department in the authentication of originals and copies of books, records, papers, writings, and documents of the Department, for all purposes, including the purposes authorized by 28 U.S.C. 1733(b). Treas. Dept. Order 107 (Rev. 18) superseded.

Treas. Dept. Order 107 (Rev. 19), 1975–2 C.B. 606.

2.53 Secretary of the Treasury. The manner of designating certain officers to act as Secretary of the Treasury is set forth. E.O. 11680 revoked.

E.O. 11822, 1975–1 C.B. 641.

2.54 Signing proofs of claim. Authority has been delegated to certain officers of the International Operations Division to sign proofs of claim and other documents asserting obligations incurred in connection with bankruptcy and receivership, decedent's estate, corporate dissolution, or other insolvency proceedings.

IOD Delegation 22, 1957–2 C.B. 1091.

2.55 Summons; three additional forms. Rev. Proc. 55–6 is declared obsolete because it does not reflect current law and practice with respect to official summons forms now in use by the Service and the Commissioner's current delegation of authority to issue summons. §301.7602–1. (Sec. 601.105, S.P.R.; Sec. 7602, '54 Code.)

Rev. Proc. 84–62, 1984–37 I.R.B. 35.

2.56 Tax treaties; "competent authority." Authority to act as the "competent authority or taxation authority" in all tax treaties is delegated to the Commissioner of Internal Revenue and may be redelegated.

Treas. Dept. Order 150–83, 1973–2 C.B. 508.

2.57 Title and address; Assistant Commissioner (International). The correct title and address is provided for the office of the new Assistant Commissioner (International) that was established May 12, 1986, to coordinate the various international activities of the Service.

Notice 86–15, 1986–52 I.R.B. 19.

2.58 Videotex tax library and information retrieval; user charges. User charges and guidelines are set forth for information retrieval and videotex tax library material produced by the Service. (Sec. 601.602, S.P.R.)

Rev. Proc. 86–11, 1986–8 I.R.B. 25.

2.59 Videotex Tax Library; user charges. User charges and guidelines are set forth for information retrieval services, computer timesharing services, database vendors and brokers and others for the use of the Videotex Tax Library produced by the Service. (Sec. 601.201, S.P.R.)

Rev. Proc. 85–14, 1985–1 C.B. 515.

Appeals

4.1 Appeals Coordinated Issues; settlement or other disposition. Procedures are set forth relating to the settlement or other disposition of cases under the jurisdiction of an Appeals Office that involves issues identified as Appeals Coordinated Issues. (Sec. 601.106, S.P.R.)

Rev. Proc. 79–34, 1979–2 C.B. 498.

4.2 Conference; recognition of persons employed by taxpayers. The extent to which examining officers and other employees of the Revenue Service may accord recognition to persons employed by taxpayers in connection with Federal tax matters and discuss matters with such persons is outlined. Rev. Proc. 59–4 superseded. (Sec. 601.501, S.P.R.)

Rev. Proc. 68–29, 1968–2 C.B. 913.

4.3 Disposition of docketed cases. Procedures are revised for the development and disposition of cases docketed in the Tax Court. Rev. Proc. 79–59 superseded. (Sec. 601.106, S.P.R.)

Rev. Proc. 82–42, 1982–2 C.B. 761.

4.4 Moral, religious, etc., grounds. Failure or refusal to comply with tax laws on moral, religious, political, constitutional, conscientious, or similar grounds is not included within the scope of a taxpayer's right to a district conference or to appeal to the Regional Appellate Division where neither the amount of the proposed tax nor liability for it is in dispute. (Sec. 601.105, S.P.R.)

Rev. Proc. 68–12, 1968–1 C.B. 763.

4.5 Order dismissing indictment. An order dismissing an indictment against a taxpayer in one district so that a trial may be held in another district is not appealable.§39.145–1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Parr, 351 U.S. 453, Ct. D. 1799, 1956–2 C.B. 988.

4.6 Penalties assessed. Procedures for appeal of assessments of certain additions to tax, additional amounts, and penalties are now found in section 601.106 of the Statement of Procedural Rules. Rev. Proc. 78–1 is obsolete. §301.7805–1. (Sec. 601.104, S.P.R.; Sec. 7805, '54 Code.)

Rev. Proc. 86–10, 1986–8 I.R.B. 25.

4.7 Unagreed audit cases; district conference. The district conference procedures with respect to unagreed cases are revised to permit district conferees to consider and accept settlement proposals by taxpayers, subject to the approval of certain designated officials, in field and office audit cases when the total amount of proposed additional tax, proposed overassessment, or claimed refund does not exceed $2,500 for any year. These procedures are effective April 1, 1974. Rev. Proc. 68–30 superseded. (Sec. 601.105, S.P.R.)

Rev. Proc. 74–4, 1974–1 C.B. 414.

4.8 Written protests. Effective March 1, 1968, the Appellate Division will consider certain unagreed cases and offers in compromise without requiring the taxpayer to file a written protest. (Sec. 601.106, S.P.R.)

Rev. Proc. 68–4, 1968–1 C.B. 746.

4.9 Written protests; penalty of perjury. The written protests taxpayers are required to file with district directors to bring unagreed tax cases before the Appellate Division need no longer be made under oath. The protests may now be certified as true under the penalties of perjury. (Sec. 601.106, S.P.R.)

Rev. Proc. 61–36, 1961–2 C.B. 575.

Assessments

(See also: Limitation period)

6.1 Addition to tax; deficiency notice; waiver of restrictions. A statutory notice of deficiency must be issued to assess and collect the addition to the tax for late filing by a taxpayer who has signed a waiver of restrictions on assessment and collection with respect to a deficiency but has refused to sign a waiver of the addition to tax for late filing.§§301.6211-1, 301.6213-1, 301.6659-1. (Secs. 6211, 6213, 6659; '54 Code.)

Rev. Rul. 78-20, 1978-1 C.B. 441.

6.2 Additions to tax; fraud; after taxpayer's death. The 50 percent addition to tax for fraud that was not assessed during a taxpayer's life may be assessed and collected after his death. G.C.M. 22326 superseded.§§301.6653-1, 301.6659-1. (Secs. 6653, 6659; '54 Code.)

Rev. Rul. 73-293, 1973-2 C.B. 413.

6.3 Jeopardy and termination; procedure and authorization. Procedures relating to the processing and authorization of termination and jeopardy assessments are set forth. Rev. Proc. 60-4 superseded. (Sec. 601.104, S.P.R.; Secs. 6091, 6211, 6851, 6861, 6862, 6863, 7429, '54 Code.)

Rev. Proc. 78-12, 1978-1 C.B. 590.

6.4 Jeopardy; deficiency notice requirement. The tax due upon the jeopardy termination of a taxpayer's taxable year is subject to a deficiency notice as a prerequisite to levy and seizure of the taxpayer's property. §301.6861-1. (Secs. 6211, 6851, 6861; '54 Code.)

Laing, 423 U.S. 161, Ct. D. 1973, 1976-1 C.B. 388.

6.5 Jeopardy; factual basis. The Service must disclose the factual basis for a jeopardy assessment to a taxpayer who has filed suit for injunction against the collection of the tax and would suffer irreparable injury if the assessment were not restrained. (Sec. 7421, '54 Code.)

Shapiro, 424 U.S. 614, Ct. D. 1974, 1976-1 C.B. 399.

6.6 Limitation period; advance payment of agreed deficiency plus interest. The Service is barred from assessing the payment of an agreed deficiency plus interest after the running of the period of limitation of assessment. However, the advance payment of the deficiency plus interest does not constitute an overpayment of tax so as to entitle the taxpayer to a refund. Rev. Rul. 74-580 distinguished. §§301.6401-1, 301.6402-1, 301.6501(a)-1. (Secs. 6401, 6402, 6501; '54 Code.)

Rev. Rul. 85-67, 1985-1 C.B. 364.

6.7 Penalties; appeal procedures. Procedures for appeal of assessments of certain additions to tax, additional amounts, and penalties are now found in section 601.106 of the Statement of Procedural Rules. Rev. Proc. 78-1 is obsolete. §301.7805-1. (Sec. 601.104, S.P.R.; Sec. 7805, '54 Code.)

Rev. Proc. 86-10, 1986-8 I.R.B. 25.

6.8 Request for prompt assessment. A written request for prompt assessment of tax, by an executor, or other fiduciary representing the estate of a decedent, or by a corporation contemplating dissolution, must be a separate document filed after the return in question has been filed, and it must be transmitted to the District Director in an envelope separate from any other document.§301.6501(d)-1. (Sec. 6501, '54 Code.)

Rev. Rul. 57-319, 1957-2 C.B. 855.

6.9 Temporary injunction; transfer of funds from foreign branch of domestic bank. A U.S. district court has jurisdiction to issue a temporary injunction, pending service of process on a foreign corporation and an adjudication of the substantive tax issues on the merits, enjoining a domestic bank from transferring any property or rights to property held by it at any branch office within or without the U.S. for the account of a foreign corporation against which jeopardy assessments have been made. (Sec. 7402, '54 Code.)

First National City Bank, 379 U.S. 378, Ct. D. 1895, 1965-2 C.B. 457.

Attorneys and agents

8.1 Advisory committee. The Chief Counsel's Advisory Committee on Rules of Professional Conduct is established.

1975-1 C.B. 635.

8.2 Director of Practice; establishment of office. Miscellaneous regulations are issued establishing the office of Director of Practice for consideration of cases relating to enrollment, disbarment or disciplinary measures. The Committee on Practice and office of Attorney for the Government are abolished.

1953-1 C.B. 483.

8.3 Enrollment examination; transfer of functions. The function of administering the Special Enrollment Examination for practice by agents before the Internal Revenue Service has been transferred, effective April 28, 1966, from the Office of the Director of Practice in the Office of the General Counsel of the Treasury to the Internal Revenue Service.

Treas. Dept. Order 175-3, 1966-1 C.B. 557.

8.4 Powers of attorney; sufficiency. A signed Form 2848, Power of Attorney, is insufficient to authorize a taxpayer's representative to sign Form 907, Agreement to Extend Period of Limitations, in the absence of that specific authorization. §301.6532-1. (Sec. 6532, '54 Code.)

Rev. Rul. 76-60, 1976-1 C.B. 387.

8.5 Practice before the Service; Circular 230; proposed amendment. A proposed modification of the regulations governing practice before the Service (31 CFR Part 10) would require that those who are enrolled to practice before the Service renew their enrollment on a periodic basis. A condition of eligibility for renewal would be satisfaction of continuing education requirements.

Notice 85-10, 1985-1 C.B. 433.

8.6 Practice before the Service; Circular 230; proposed amendment. A proposed amendment to Circular 230 will require continuing professional education as a condition for the maintenance of good standing for enrollment to practice before the Service.

Notice 84-12, 1984-31 I.R.B. 10.

8.7 Practice before the Service; interim procedures. Interim instructions and procedures for filing applications for enrollment and applications for renewal of enrollment cards and recognition to be accorded attorneys and certified public accountants by officers of the Revenue Service. These procedures implement the provisions of Treas. Dept. Cir. 230 (Revised) which are effective September 12, 1966. Rev. Procs. 57-3, 58-16, 60-2 superseded. (Sec 601.501, S.P.R.)

Rev. Proc. 66-44, 1966-2 C.B. 1252.

8.8 Practice before the Service; revised rules. Treasury Department Circular 230 has been revised to incorporate amendments that have been made to the regulations governing the practice of attorneys, certified public accountants, enrolled agents, and enrolled actuaries before the Service through February 23, 1984.

Treas. Dept. Cir. 230 (Rev.), 1985-51 I.R.B. 6.

8.9 Request for prompt determination of tax liability; power of attorney; Form 2848. A request for prompt determination of estate tax liability and discharge of an executor from personal liability under the provisions of section 2204 of the Code may be made by an attorney duly authorized by the executor through a properly executed Form 2848, General Power of Attorney, or Form 2848-A, Limited Power of Attorney, to act in all matters relating to the estate tax liability.§20.2204-1. (Sec. 2204, '54 Code.)

Rev. Rul. 65-186, 1965-2 C.B. 380.

8.10 Revocation of power of attorney; incapacitated principal. Under authority of a power of attorney executed by the taxpayer, the attorney undertook settlement of pending Tax Court proceedings. During the course of the negotiations, the taxpayer lapsed into a coma and died a few days later. While he was in the coma, his attorney and a representative of the Service, both of whom were aware of the decedent's condition, signed a settlement stipulation. *Held,* under New York State law, the power of attorney was revoked or suspended by operation of law as of the time decedent lapsed into a coma and, therefore, the settlement stipulation was not signed by the decedent or by one authorized to act on his behalf.

John Dierks, 40 T.C. 539, Acq., 1964-2 C.B. 5.

8.11 Self-incrimination; accountant's records; summons to attorney. A taxpayer's rights under the Fourth and Fifth Amendments are not violated by the enforcement of a summons compelling an attorney to produce an accountant's potentially incriminating records that were given to the attorney by the taxpayer. §301.7604-1. (Sec. 7604, '54 Code.)

Fisher, 425 U.S. 391, Ct. D. 1977, 1976-1 C.B. 411

8.12 Substitute power of attorney. A substitute power of attorney executed in accordance with the terms of the original power does not destroy the rights of the original attorney or agent to represent the principal in matters before the Treasury Department unless such intent is indicated in the original power of attorney.

Rev. Rul. 54-142, 1954-1 C.B. 394.

8.13 Unenrolled preparers of returns. Procedures are set forth to prescribe the standards of conduct, the scope of authority, and the circumstances and conditions under which an individual preparer of tax returns may exercise, without enrollment, the privilege of limited practice as a taxpayer's representative before the Service. Rev. Proc. 68-20 modified and superseded. (Sec. 601.502, S.P.R.)

Rev. Proc. 81-38, 1981-2 C.B. 592.

Bankruptcy and receiverships

10.1 Audit of returns. A trustee or other fiduciary of a bankruptcy estate who is ready to close the estate may obtain an expeditious audit of any Federal tax returns filed by the fiduciary. (Sec. 601.105, S.P.R.)

Rev. Proc. 76-23, 1976-1 C.B. 562.

10.2 Collection proceedings; limitation period. The filing of a proof of claim with a trustee in bankruptcy or a receiver appointed by a court within six years from the date of assessment is the commencement of collection proceedings for purposes of the statutory period of limitation. I.T. 2244 superseded.§301.6502-1. (Sec. 6502, '54 Code.)

Rev. Rul. 70-555, 1970-2 C.B. 296.

10.3 Deficiencies not assessed or claimed; Tax Court; jurisdiction. Taxpayers, after being adjudicated bankrupt but before termination of the bankruptcy proceedings, filed petitions with the Tax Court for redetermination of proposed deficiencies for pre-bankrupt years. The proposed deficiencies were neither assessed or claimed in the bankruptcy proceedings. Motions were filed on behalf of the Commissioner to dismiss the petitions on the grounds that the Tax Court lacked jurisdiction under section 6871(b) of the Code. *Held*, the prohibition of section 6871(b) of the Code applies only when the deficiency has been assessed under the immediate assessment procedure authorized in section 6871(a) or where a timely proof of claim has been filed with the bankruptcy court; accordingly, the Tax Court has jurisdiction to redetermine the deficiencies. (Secs. 6213, 6871, 7442; '54 Code.)

Samuel J. King, 51 T.C. 851, Acq., 1973–1 C.B. 1; Glenn E. Stevenson, 51 T.C. 970, Acq., 1973–1 C.B. 2.

10.4 Examination of returns. Procedures are provided for the trustee (or debtor in possession) to obtain a prompt determination by the Service of any unpaid tax liability of the bankruptcy estate incurred during the administration of the estate. (Sec. 601.105, S.P.R.)

Rev. Proc. 81–17, 1981–1 C.B. 688.

10.5 Interest on taxes incurred by debtor in possession; trustee's liability. Where an arrangement proceeding under Chapter XI of the Bankruptcy Act is terminated and a petition in bankruptcy is filed before taxes become payable, a superseding trustee is not liable for interest on taxes incurred by the debtor in possession during the arrangement proceeding. Since no interest on any of the taxes accrued beyond the period of the arrangement proceeding, no interest could accumulate on a trust fund composed of withholding and cabaret taxes incurred by the debtor in possession which did not become payable until after the arrangement proceeding was terminated. The superseding trustee is liable for penalties for failure to file timely returns.§§1.6012–3, 301.6011–1, 301.6601–1, 301.6659–1. (Secs. 6011, 6012, 6601, 6659; '54 Code.)

Nicholas, 384 U.S. 678, Ct. D. 1912, 1966–2 C.B. 511.

10.6 Non-pecuniary loss penalties and post-petition interest. Collectibility of post-petition interest and non-pecuniary loss penalties claimed against the estate of a bankrupt in proceedings under the Bankruptcy Act and in general receivership or assignment for the benefit or creditor cases. G.C.M. 21860 and Rev. Rul. 62–96 superseded. §§301.6601–1, 301.6651–1—301.6653–1, 301.6656–1—301.6658–1, 301.6672–1—301.6674–1, 301.6676–1, 301.6871(a)–2. (Secs. 6601, 6651—6658, 6672—6676, 6871; '54 Code.)

Rev. Rul. 68–574, 1968–2 C.B. 595.

10.7 Non-pecuniary loss penalties and post-petition interest. Non-pecuniary loss penalties and post-petition interest will not be set off against funds due a bankrupt or insolvent taxpayer or estate by the U.S. where such penalties or interest would not be collectible as a claim against the bankrupt or insolvent estate. Rev. Rul. 56–162 revoked.§§301.6601—301.6871(a)–2 and intermediate sections. (Secs. 6601, 6651—6658, 6672—6676, 6871; '54 Code.)

Rev. Rul. 71–31, 1971–1 C.B. 408.

10.8 Non-pecuniary loss penalties not claimed in bankruptcy proceedings; Tax Court; jurisdiction. Income tax deficiencies and additions to the tax (fraud penalties) were assessed and proof of claim for the tax deficiencies was timely filed with the Bankruptcy Court. Section 57 of the Bankruptcy Act bars the allowance in the bankruptcy of a claim for a nonpecuniary loss Federal tax penalty, e.g. a fraud penalty. Taxpayers filed a petition with the Tax Court for redetermination of the deficiencies and a motion for dismissal for lack of jurisdiction was filed on behalf of the Commissioner. *Held*, section 6871(b) of the Code does not bar the taxpayers from petitioning the fraud penalties which were not included in the proof of claim filed although they were assessed along with the tax. The Bankruptcy Court could not have allowed the fraud penalties and, therefore, the purpose of section 6871 does not require a taxpayer to be denied access to the Tax Court. (Secs. 6871, 7442; '54 Code.)

John V. Prather, 50 T.C. 445, Nonacq., 1973–1 C.B. 2.

10.9 Penalties. Federal tax penalties against the estate of a bankrupt are prohibited by Section 57(j) of the Bankruptcy Act, even though the penalties constitute liens perfected before bankruptcy.§301.6321–1. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Simonson, 369 U.S. 38, Ct. D. 1867, 1962–1 C.B. 302.

10.10 Post-petition interest. Post-petition interest on an undischarged tax assessment in a bankruptcy proceeding remains a personal liability of the debtor and may be recovered by the U.S. out of assets acquired by the debtor after his adjudication of bankruptcy. The government's right to continuing interest on an undischarged and unpaid tax liability is not limited by section 6873 of the Code, relating to the effect of bankruptcy proceedings on unpaid claims.§301.6873–1. (Sec. 6873, '54 Code.)

Bruning, 376 U.S. 358, Ct. D. 1888, 1964–2 C.B. 500.

10.11 Priority of liens. The principles of law set out in *City of New Britain* decision will be followed by the Revenue Service when its tax claim is asserted against the proceeds realized from the bankruptcy sale of personal property in instances where a circular priority situation develops because applicable provisions of section 67c of the Bankruptcy Act require the postponement in payment of the Federal tax lien or other statutory lien to the payment of costs of administration and wage claims.§301.6323–1. (Sec. 6323, '54 Code.)

Rev. Rul. 61–101, 1961–1 C.B. 715.

10.12 Priority; levy upon assignee. A valid notice of levy served upon an assignee for the benefit of creditors, before the filing of a petition in bankruptcy but after the assigned assets were converted to cash, gave the Service constructive custody of the cash proceeds in the assignee's possession and neither the bankrupt nor the petitioner as receiver could assert a claim to the proceeds. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Phelps, 421 U.S. 330, Ct. D. 1971, 1975–1 C.B. 379.

10.13 Refunds and credits. A procedure is provided for the trustee (or debtor in possession) representing the bankruptcy estate to file a claim for credit or refund for any overpayment of tax. §301.6402–2. (Sec. 601.105, S.P.R.; Sec. 6402, '54 Code.)

Rev. Proc. 81–18, 1981–1 C.B. 688

10.14 Tax Court jurisdiction. Taxpayer, adjudicated bankrupt in 1923, filed a petition with the Board of Tax Appeals in 1926 for redetermination of a deficiency assessed for the year 1921. The Board originally dismissed the suit on other grounds, but was reversed by the Court of Appeals, which remanded the case for a decision on the merits. The Commissioner then raised taxpayer's bankruptcy and challenged the Board's jurisdiction under section 282(a) of the Revenue Act of 1926, which prohibits the filing of a redetermination petition after adjudication of bankruptcy. In view of the mandate of the Court of Appeals and the whole record in the proceeding, the Board denied the Commissioner's motion to dismiss. (Sec. 282(a), Rev. Act 1926; Sec. 6871, '54 Code.)

Eli McDonald, 23 B.T.A. 521, Acq. withdrawn and Nonacq. substituted, 1966–1 C.B. 4.

10.15 Trustee in bankruptcy. A claim for refund of estate or gift taxes paid erroneously by a trustee in bankruptcy in violation of the general priority provisions of the Bankruptcy Act will be considered and processed without requiring further action by the trustee or bankruptcy court. (Sec. 3770, '39 Code; Sec. 6402, '54 Code.)

Rev. Rul. 55–32, 1955–1 C.B. 557.

10.16 Trustee; validity of unrecorded tax lien. A trustee in bankruptcy has the rights of a statutory "judgment creditor" and, as such, prevails over an unrecorded Federal tax lien.§301.6323–1. (Sec. 6323, '54 Code.)

Speers, 382 U.S. 266, Ct. D. 1905, 1966–1 C.B. 282.

10.17 Unpaid claims; priority of U.S. Sections 199, 216, and 221 of Chapter X of the Bankruptcy Act do not exclude by implication the statutory priority granted by section 3466 of the Revised Statutes to the United States for its unpaid tax claim against an insolvent corporation reorganized under Chapter X. Thus, in such a reorganization calling for installment payments to the United States while lesser ranking creditors are also being paid is unacceptable.§301.6873–1. (Sec. 6873, '54 Code.)

Key, 397 U.S. 322, Ct. D. 1938, 1970–1 C.B. 274.

Books and records

14.1 ADP systems; guidelines. The basic requirements that the Service considers to be essential in cases where a taxpayer's records are maintained within an Automatic Data Processing System are specified. References to the ADP system include all accounting and/or financial systems that process all or part of a taxpayer's transactions, records, or data by other than manual records. Rev. Proc. 64–12 and 80–42 superseded. (Sec. 601.105, S.P.R.; Sec. 6001, '54 Code.)

Rev. Proc. 86–19, 1986–14 I.R.B. 10.

14.2 Additional inspection after closing agreement. Execution and approval of a closing agreement does not preclude an additional inspection of a taxpayer's records to determine whether fraud, malfeasance, or misrepresentation of material fact exists in connection with the execution of the agreement. G.C.M. 6894 superseded. §§301.7121–1, 301.7605–1. (Secs. 7121, 7605; '54 Code.)

Rev. Rul. 72–487, 1972–2 C.B. 645.

14.3 Data processing accounting system; evaluation. Evaluations of data processing accounting systems and records to determine which records are to be retained, their retention period and their adequacy, are not examinations, investigations, or inspections. Such evaluations are not directly related to the determinations of tax liability for a particular taxable period.§301.7605–1. (Sec. 7605, '54 Code.)

Rev. Rul. 72–375, 1972–2 C.B. 646.

14.4 Examination; injunctive relief from enforcement of summons; examination of taxpayer's records. The Commissioner issued summonses to an accounting firm employed by the attorneys of a taxpayer, directing the firm to produce records pertaining to the taxpayer. The attorneys sought injunctive relief from the enforcement of the summonses, claiming that the summonses were void because the records were work product in trial preparation and the production of the records would require the taxpayer to incriminate himself and deprive him of counsel.

Denial of the injunction was upheld because the legal remedy provided by the Code works no injustice, suffers no constitutional invalidity, and provides full opportunity for judicial review before any coercive sanctions may be imposed.§§301.7602–1, 301.7604–1. (Secs. 7210, 7402, 7602, 7604; '54 Code.)

Reisman, 375 U.S. 440, Ct. D. 1887, 1964–1 (Part I) C.B. 517.

14.5 Examination; judicial enforcement of summons issued former employer. A taxpayer having no significantly protectible interest in a former employer's records has no right to intervene in a proceeding to enforce summonses issued to produce the records to aid an investigation before recommendation for criminal prosecution. §§301.7602–1, 301.7604–1. (Secs. 7602, 7604; '54 Code.)

Donaldson, f.k.a. Sweet, 400 U.S. 517, Ct. D. 1942, 1971–1 C.B. 416.

14.6 Examination; judicial enforcement of summons. The Government need not show probable cause to suspect fraud where it seeks to obtain judicial enforcement of an order for examination of a taxpayer's records unless the taxpayer raises a substantial question that judicial enforcement of the administrative summons would be an abusive use of the court's process. This question must be predicated on more than the fact of re-examination and the running of the statute of limitations on ordinary tax liability.§§301.7604–1, 301.7605–1. (Secs. 7402, 7604, 7605; '54 Code.)

Powell, 379 U.S. 48, Ct. D. 1891, 1965–1 C.B. 547; Ryan, 379 U.S. 61, Ct. D. 1892, 1965–1 C.B. 552.

14.7 Examination; judicial enforcement of summons. A District Court's finding that summonses issued by a special agent to a taxpayer's bank were "solely for the purpose of unearthing evidence of criminal conduct" was not sufficient to establish that the summonses were not issued in good faith under section 7602 and, therefore, not enforceable. §§301.7602–1, 301.7604–1. (Secs. 7602, 7604; '54 Code.)

LaSalle National Bank, 437 U.S. 298, Ct. D. 1994, 1978–2 C.B. 336.

14.8 Microfilm reproduction. Microfilm reproduction, in accordance with Rev. Proc. 75–33, of general books of account and supporting records of detail will be considered books and records within the meaning of section 6001 of the Code. I.T. 3866 revoked. §301.6001–1. (Sec. 6001, '54 Code.)

Rev. Rul. 75–265, 1975–2 C.B. 460.

14.9 Microfilm reproduction. Procedures are updated under which microfilm (including microfiche) reproduction of general books of account will be considered books and records. Rev. Proc. 64–12 amplified and Rev. Proc. 76–43 superseded. (Sec. 601.105, S.P.R.)

Rev. Proc. 81–46, 1981–2 C.B. 621.

14.10 Summons; dual purpose; John Doe requirements. When, pursuant to section 7602, the Service serves a summons on a known taxpayer with the dual purpose of investigating both that taxpayer's liability and unnamed parties' tax liabilities, it need not comply with the requirements for John Doe summonses under section 7609, as long as all the information sought is relevant to a legitimate investigation of the summoned taxpayer. (Secs. 7602, 7609; '54 Code.)

Tiffany, 469 U.S., Ct. D. 2029, 1985–1 .C.B. 386.

14.11 Summons; "John Doe"; issued to bank. The Service was within the scope of its authority in issuing a "John Doe" summons to a bank requiring the bank to produce deposit slips that would identify the depositors of 400 deteriorated $100 bills deposited with the bank within a period of a few weeks. §§301.7601–1, 301.7602–1. (Secs. 7601, 7602; '54 Code.)

Bisceglia, 420 U.S. 141, Ct. D. 1970, 1975–1 C.B. 379.

14.12 Summons; handwriting exemplar. The Service may require individuals to appear and provide handwriting exemplars under the summons authority conferred by section 7602. §301.7602.1. (Sec. 7602, '54 Code.)

Euge, 444 U.S. 707, Ct. D. 1999, 1980–1 C.B. 310.

Claims

(See: Limitation period; Refunds and credits)

Closing agreements

16.1 Additional inspection of books and records. Execution and approval of a closing agreement does not preclude an additional inspection of a taxpayer's records to determine whether fraud, malfeasance, or misrepresentation of material fact exists in connection with the execution of the agreement. G.C.M. 6894 superseded. §§301.7121–1, 301.7605–1. (Secs. 7121, 7605; '54 Code.)

Rev. Rul. 72–487, 1972–2 C.B. 645.

16.2 Effect of subsequent legislation. A valid closing agreement establishing a final determination of tax liability for a prior taxable period is not affected by subsequent retroactive legislation where such legislation is silent as to its effect on closing agreements. (Sec. 7121, '54 Code.)

Rev. Rul. 56–322, 1956–2 C.B. 963.

16.3 Implied revocation by taxpayer prior to approval by Commissioner. The taxpayer's filing of a claim for refund and the sending of a letter to the Commissioner stating that an adjustment to the taxpayer's return was erroneous, subsequent to the payment of a deficiency and the execution and submission of a closing agreement based on such adjustment but prior to the Commissioner's approval of the agreement, constitutes an implied revocation of the offer to enter into the closing agreement. G.C.M. 9552 superseded. §301.7121–1. (Sec. 7121, '54 Code.)

Rev. Rul. 73–514, 1973–2 C.B. 416.

16.4 Procedures. Procedures are outlined for closing agreements under section 7121 of the Code except those which originate in, and involve, rulings prepared by the office of the Assistant Commissioner (Technical).§301.7121–1. (Sec. 601.202, S.P.R.; Sec. 7121, '54 Code.)

Rev. Proc. 68–16, 1968–1 C.B. 770.

16.5 Revenue Agents unintentional mistake. A Revenue Agent's unintentional mistake in failing to include certain deductions in arriving at the result upon which a closing agreement was based does not constitute a misrepresentation of a material fact upon which the agreement may be set aside. G.C.M. 7549 superseded.§301.7121–1. (Sec. 7121, '54 Code.)

Rev. Rul. 73–459, 1973–2 C.B. 415.

16.6 Ruling procedure. Revised procedures are provided for issuing rulings, determination letters, and information letters, and for entering into closing agreements on specific issues. Rev. Proc. 83–1 superseded. (Sec. 601.201, S.P.R.)

Rev. Proc. 84–1, 1984–1 C.B. 342.

16.7 Ruling procedure. Revised procedures are provided for furnishing technical advice to District Directors and Chiefs, Appeals Offices. Taxpayer's rights, when such advice has been requested, are also set forth. Rev. Proc. 83–2 superseded. (Sec. 601.105, S.P.R.)

Rev. Proc. 84–2, 1984–1 C.B. 354.

Collection of tax

(See also: Levy; Liens)

18.1 Addition to tax; deficiency notice; waiver of restrictions. A statutory notice of deficiency must be issued to assess and collect the addition to the tax for late filing by a taxpayer who has signed a waiver of restrictions on assessment and collection with respect to a deficiency but has refused to sign a waiver of the addition to tax for late filing.§§301.6211–1, 301.6213–1, 301.6659–1. (Secs. 6211, 6213, 6659; '54 Code.)

Rev. Rul. 78–20, 1978–1 C.B. 441.

18.2 Additions; fraud; after taxpayer's death. The 50 percent addition to tax for fraud that was not assessed during a taxpayer's life may be assessed and collected after his death. G.C.M. 22326 superseded.§§301.6653–1, 301.6659–1. (Secs. 6653, 6659; '54 Code.)

Rev. Rul. 73–293, 1973–2 C.B. 413.

18.3 Armed Forces; combat zone; limitation period. The last date for the timely performance of the acts enumerated in section 7508, relating to an individual serving in a combat zone, is determined by adding to the time to be disregarded under section 7508 the time which remained for the performance of such acts at the time the individual entered the combat zone. (Secs. 6072, 7508; '54 Code.)

Rev. Rul. 76–425, 1976–2 C.B. 447.

18.4 Bankruptcy; limitation period. The filing of a proof of claim with a trustee in bankruptcy or a receiver appointed by a court with six years from the date of assessment is the commencement of collection proceedings for purposes of the statutory period of limitation. I.T. 2244 superseded.§301.6502–1. (Sec. 6502, '54 Code.)

Rev. Rul. 70–555, 1970–2 C.B. 296.

18.5 Banks; insolvent; immunity termination. An insolvent bank's immunity from the collection of tax is terminated if depositors and general creditors are on a parity and all of the general creditors have not been paid but all of the depositors have been paid in full without recourse. G.C.M. 22985 superseded.§301.7507–9. (Sec. 7507, '54 Code.)

Rev. Rul. 73–294, 1973–2 C.B. 422.

18.6 Banks; insolvent; immunity termination. An insolvent bank's immunity from tax assessment and collection terminates when its financial statements show earnings in excess of depositors' claims even though the State Superintendent of Banks will not permit actual payment to depositors until earnings are sufficient to cover a reserve fund plus the depositors' claims. G.C.M. 22656 and Rev. Rul. 60–139 superseded.§301.7507–9. (Sec. 7507, '54 Code.)

Rev. Rul. 73–353, 1973–2 C.B. 423.

18.7 Penalties; failure to collect or pay; stay of collection. The bond and sureties requirements of reg. 301.7101–1 will apply to situations involving stay of collection of the 100 percent penalty assessment of section 6672. §§301.6672–1, 301.7101–1. (Secs. 6672, 7101; '54 Code.)

Rev. Rul. 79–170, 1979–1 C.B. 437.

18.8 Post-petition interest and non-pecuniary loss penalties. Collectibility of post-petition interest and non-pecuniary loss penalties claimed against the estate of a bankrupt in proceedings under the Bankruptcy Act and in general receivership or assignment for the benefit of creditor cases. G.C.M. 21860 and Rev. Rul. 62–96 superseded. §§301.6601-1, 301.6651-1—301.6653-1, 301.6656-1—301.6658-1, 301.6672-1—301.6674-1, 301.6676-1, 301.6871(a)-2. (Secs. 6601, 6651—6658, 6672—6676, 6871; '54 Code.)

Rev. Rul. 68-574, 1968-2 C.B. 595.

18.9 Post-petition interest and non-pecuniary loss penalties. Non-pecuniary loss penalties and post-petition interest will not be set off against funds due a bankrupt or insolvent taxpayer or estate by the U.S. where such penalties or interest would not be collectible as a claim against the bankrupt or insolvent estate. Rev. Rul. 56-162 revoked.§§301.6601-1—301.6871(a)-2 and intermediate sections. (Secs. 6601, 6651—6658, 6672, 6674, 6676, 6871; '54 Code.)

Rev. Rul. 71-31, 1971-1 C.B. 408.

Compromises
(See: Offers in compromise)

Computation of tax

20.1 Estate; serviceman killed in action. Computation of the estate tax is illustrated for the estate of a serviceman declared killed in action after December 31, 1976. Such an estate, which is exempt under section 2201 from the "additional estate tax" as defined in section 2011(d), will have no estate tax liability if the maximum state death tax credit under section 2011 is allowable and the taxable estate is less than $2,265,000, or less than $825,000 in a jurisdiction that has no state death tax. §20.2201-1. (Sec. 2201, '54 Code.)

Rev. Rul. 78-361, 1978-2 C.B. 246.

20.2 Gift; paid by donee. Examples of the tax computation, applying the formula contained in Rev. Rul. 75-72, are given for property in various states transferred gratuitously by donors residing therein with the understanding that the donee would pay the resulting Federal and state gift taxes. §25.2512-1. (Sec. 2512, '54 Code.)

New York,
Rev. Rul. 76-49, 1976-1 C.B. 294.

North Carolina,
Rev. Rul. 76-57, 1976-1 C.B. 297.

California,
Rev. Rul. 76-104, 1976-1 C.B. 301.

Virginia,
Rev. Rul. 76-105, 1976-1 C.B. 304.

Conferences
(See: Appeals)

Court decisions
(See specific subject headings)

Credits
(See: Refunds and credits)

Criminal prosecutions
(See also: Fraud; Suits)

22.1 Aiding revenue agent in accepting unlawful compensation. An individual accused of aiding a revenue agent in accepting unlawful compensation may properly be convicted of the offense despite the prior acquittal of the agent. (Sec. 7214, '54 Code.)

F.W. Standefer, 444 U.S. 1011, Ct. D. 2000, 1980-2 C.B. 379.

22.2 Appeal of court order dismissing indictment. An order dismissing an indictment against a taxpayer in one district so that a trial may be held in another district is not appealable.§39.145-1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Parr, 351 U.S. 453, Ct. D. 1799, 1956-2 C.B. 988.

22.3 Conspiracy to evade tax; limitation period. A conspiracy to evade taxes by concealing holdout income from pinball machines continued beyond the filing of the last return where later overt acts (furnishing false records and statements) were committed within six years of the indictment in order to conceal such income until action thereon was barred, so that prosecution was timely under the six-year limitation period. The taxpayer was not placed in double jeopardy when the Court of Appeals modified its original order for an acquittal and entered a new one directing a retrial because the jury had not been properly instructed, since the original judgment had not become final prior to the rehearing.§39.145-1. (Secs. 145, 3748, '39 Code; Secs. 6531, 7201, '54 Code.)

Forman, 361 U.S. 416, Ct. D. 1843, 1960-1 C.B. 695.

22.4 Evidence; documents illegally seized from third party. Evidence that was discovered as a result of an illegal seizure of documents from a third party, who was not before the court, may not be suppressed in a criminal trial as a Fourth Amendment violation, nor does the supervisory power of the federal courts extend to suppress such evidence.

Payner, 444 U.S. 923, Ct. D. 2001, 1980-2 C.B. 749.

22.5 Evidence; electronic eavesdropping in violation of Manual regulations. The Service monitored conversations between a Revenue Agent and a taxpayer later accused of offering the agent a bribe. The monitoring, while done in good faith, was in violation of Internal Revenue Manual regulations requiring special prior authorization. Failure to comply with such regulations did not violate any provision of the Constitution or any Act of Congress, and recordings obtained during the monitoring need not be excluded from evidence.

Caceres, 440 U.S. 741, Ct. D. 1998, 1979-1 C.B. 465.

22.6 Evidence; failure to warn of constitutional rights. Documents and oral statements obtained from a taxpayer during a routine tax investigation conducted while the taxpayer was in jail serving a state sentence could not be used as evidence in a criminal prosecution for filing false claims for refunds since the Internal Revenue Agent conducting the investigation failed to warn the taxpayer of his constitutional rights as required by the *Miranda* decision. (Sec. 7206, '54 Code.)

Mathis, 391 U.S. 1, Ct. D. 1922, 1968-2 C.B. 903.

22.7 Evidence; remand for new trial. A case must be remanded to the District Court for the limited purpose of determining the truth of certain alleged voluntary disclosures made by corporate officers with a view to obtaining immunity prior to tax evasion prosecution where newly discovered evidence, adduced by the Government on its motion to remand, casts grave doubts as to the truth of these disclosures, tainting and rendering suspect the entire record. See 371 U.S. 341. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Shotwell Manufacturing Co., 355 U.S. 233, Ct. D. 1814, 1958-1 C.B. 535.

22.8 Evidence; self-incrimination. The taxpayers made disclosures under the Treasury Department's then voluntary disclosure policy (which promised immunity to taxpayers from criminal prosecution if the disclosure was made before investigation). Fraudulent disclosures were made by the taxpayers. The evidence disclosed was used at the trial in which taxpayers were convicted of willful attempted evasion of Federal income tax. *Held*, the disclosures are admissible in evidence where fraudulent. The admission of the disclosed evidence did not offend the self-incrimination clause of the Fifth Amendment. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Shotwell Manufacturing Co., 371 U.S. 341, Ct. D. 1876, 1963-1 C.B. 365.

22.9 Felony and misdemeanor statutes. Where the charge for tax evasion against a defendant was made a felony, he is not entitled to a jury instruction that he could be found guilty of a misdemeanor, even though the facts necessary to prove either charge would be the same.§39.145-1. (Secs. 145, 3616, '39 Code; Secs. 7201, 7207, 7210, '54 Code.)

Berra, 351 U.S. 131, Ct. D. 1797, 1956-1 C.B. 644.

22.10 Felony and misdemeanor statutes. A taxpayer who willfully attempted to evade Federal income taxes by filing a false return was properly convicted of a felony rather than a misdemeanor since the scope of the misdemeanor provision had been shrunk by a series of specific enactments that had the potency of implied repeal.§39.145-1. (Secs. 145(b), 3616, '39 Code; Secs. 7201, 7207, '54 Code.)

Achilli, 353 U.S. 373, Ct. D. 1810, 1957-2 C.B. 905.

22.11 Hearsay evidence as basis of indictment. A defendant may be required to stand trial for willful evasion of taxes and a conviction may be sustained even though indictment by the grand jury was based solely on the hearsay evidence of government agents.§39.145-1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Costello, 350 U.S. 359, Ct. D. 1794, 1956-1 C.B. 639.

22.12 Jury tampering. A new trial was granted to a convicted taxpayer in a tax evasion case where he discovered after the verdict that one of the jurors had been approached concerning the case and the F.B.I. had investigated the incident to see if there had been an attempted bribe. The evidence showed that the juror was subjected to extraneous influences and that the defendant was entitled to a new trial.§39.145-1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Remmer, 347 U.S. 227, Ct. D. 1766, 1954-1 C.B. 146; 350 U.S. 377, Ct. D. 1795, 1956-1 C.B. 641.

22.13 Lesser-included offense jury charge. In a criminal prosecution for the felony offense of willfully attempting to evade and defeat income tax, the taxpayer was not entitled to a lesser-included offense charge of a misdemeanor under either section 7203 or 7207 of the Code. A lesser-included offense charge is not proper where, on the evidence presented, the factual issues to be resolved by the jury are the same as to both the lesser and greater offenses.§301.7207-1. (Secs. 7201, 7203, 7207; '54 Code.)

Sansone, 379 U.S. 886, Ct. D. 1894, 1965-2 C.B. 451.

22.14 Limitation period; extension. A timely filed complaint charging the taxpayer with willfully filing a false return is sufficient to bring about the nine-month extension of the period of limitations where it shows probable cause. (Sec. 6531, '54 Code.)

Jaben, 381 U.S. 214, Ct. D. 1902, 1965-2 C.B. 446.

22.15 Limitation period; fraudulent return. The six-year statute of limitations on a criminal prosecution for filing fraudulent returns begins to run from the date on which the return is actually filed, where an extension of time has been granted by the Commissioner, and not from the original due date of the return. (Secs. 6513, 6531; '54 Code.)

Habig, 390 U.S. 222, Ct. D. 1921, 1968–2 C.B. 589.

22.16 Meaning of "willfully." The word "willfully" as used in section 7206 means a voluntary, intentional violation of a known legal duty. (Sec. 7206, '54 Code.)

Pomponio, 429 U.S. 10, Ct. D. 1981, 1976–2 C.B. 446.

22.17 Preliminary hearing; admissibility of evidence. It is not a violation of due process to deny a preliminary hearing based on the unsupported suspicions of the defendant to ascertain whether evidence taken in violation of defendant's rights before a 1952 Grand Jury was used directly or derivatively before a 1953 Grand Jury which returned indictment or to allow tainted evidence to be admitted where defendant's counsel had consciously and intentionally waived objection to its receipt.§39.145–1. (Secs. 145, 3793, '39 Code; Secs. 7201, 7206, '54 Code.)

Lawn, 355 U.S. 339, Ct. D. 1817, 1958–1 C.B. 540.

22.18 Withdrawal of plea after sentence. An indictment for tax fraud can be returned by a grand jury without any direction to do so by the Attorney General; since the evidence does not support a claim of manifest injustice, the taxpayer may not, after sentence, withdraw his plea of *nolo contendere.* (Sec. 3740, '39 Code; Sec. 7401, '54 Code.)

Sullivan, 348 U.S. 170, Ct. D. 1773, 1955–1 C.B. 554.

Deficiencies

24.1 Adjusted interest rate. The interest rate to be charged on underpayments or paid on overpayments after January 1976 will be determined not later than October 15, 1975, based on the adjusted prime rate charged by commercial banks during September 1975. (Sec. 6621, '54 Code.)

Rev. Rul. 75–165, 1975–1 C.B. 375.

24.2 Adjusted interest rate. The adjusted rate of interest on underpayments and overpayments has been established under section 6221(b). §301.6621–1. (Sec. 6621, '54 Code.)

Rev. Rul. 75–487, 1975–2 C.B. 488.
Rev. Rul. 77–411, 1977–2 C.B. 480.
Rev. Rul. 79–366, 1979–2 C.B. 402.
Rev. Rul. 81–260, 1981–2 C.B. 244.
Rev. Rul. 82–182, 1982–2 C.B. 399.
Rev. Rul. 83–76, 1983–1 C.B. 354.
Rev. Rul. 83–171, 1983–2 C.B. 252.
Rev. Rul. 84–66, 1984–1 C.B. 260.
Rev. Rul. 84–159, 1984–44 I.R.B. 12.
Rev. Rul. 85–47, 1985–1 C.B. 367.
Rev. Rul. 85–169, 1985–44 I.R.B. 15.
Rev. Rul. 86–57, 1986–16 I.R.B. 4.
Rev. Rul. 86–146, 1986–50 I.R.B. 5.

24.3 Advance payment. Where an advance payment of a tax deficiency can be assessed, such assessment shall be consistent with any designation of the payment as to tax and interest which was made by the taxpayer. An advance payment which is not assessed will be treated as a deposit made in the nature of a cash bond for the payment of taxes thereafter found to be due. Under the circumstances described the running of interest is terminated on so much of a tax deficiency as is satisfied by an advance payment at the date of payment or 30 days after the filing of a waiver of restrictions on assessments and collection, whichever is the earlier. Effective with respect to advance payments made after February 24, 1964. Treatment of advance payment prior to February 24, 1964 is set forth in Rev. Proc. 63–11, which superseded Rev. Proc. 58–18. Rev. Proc. 64–13 modified by Rev. Proc. 82–51. §§301.6213–1, 301.6601–1. (Sec. 601.602, S.P.R.; Secs. 6213, 6601, '54 Code.)

Rev. Proc. 63–11, 1963–1 C.B. 497; Rev. Proc. 64–13, 1964–1 (Part 1) C.B. 674.

24.4 Advance payments; interest accrual. Revised procedures are provided for taxpayers who anticipate that the Service will assert deficiencies to make remittances to stop the running of interest on the deficiencies. Rev. Proc. 82–51 superseded. §§301.6213–1, 301.6402–1, 301.6601–1, 301.6611–1, 301.6622–1. (Sec. 601.105, S.P.R.; Secs. 6213, 6402, 6601, 6611, '54 Code.)

Rev. Proc. 84–58, 1984–33 I.R.B. 9.

24.5 Application of another taxpayer's overpayment; restricted interest. Guides and instructions for the computation of restricted interest are set forth. Modified to provide that rules regarding restriction of interest are not applicable where one taxpayer's overpayment is credited, with his consent, to another taxpayer's deficiency. Rev. Proc. 60–17 modified by Rev. Procs. 83–58 and 84–66. §§301.6601–1, 301.6611–1. (Sec. 601.104, S.P.R.; Sec. 3771, '39 Code; Secs. 6601, 6611, '54 Code.)

Rev. Proc. 60–17, 1960–2 C.B. 942; Rev. Proc. 65–20, 1965–2 C.B. 1003.

24.6 Bankruptcy; interest on taxes incurred by debtor in possession. Where an arrangement proceeding under Chapter XI of the Bankruptcy Act is terminated and a petition in bankruptcy is filed before taxes become payable, a superseding trustee is not liable for interest on taxes incurred by the debtor in possession during the arrangement proceeding. Since no interest on any of the taxes accrued beyond the period of the arrangement proceeding, no interest could accumulate on a trust fund composed of withholding and cabaret taxes incurred by the debtor in possession which did not become payable until after the arrangement proceeding was terminated. The superseding trustee is liable for penalties for failure to file timely returns.§§1.6012–3, 301.6011–1, 301.6601–1, 301.6659–1. (Secs. 6011, 6012, 6601, 6659; '54 Code.)

Nicholas, 384 U.S. 678, Ct. D. 1912, 1966–2 C.B. 511.

24.7 Bankruptcy; post-petition interest. Collectibility of post-petition interest and non-pecuniary loss penalties claimed against the estate of a bankrupt in proceedings under the Bankruptcy Act and in general receivership or assignment for the benefit of creditor cases. G.C.M. 21860 and Rev. Rul. 62–96 superseded.§§301.6601–1, 301.6651–1—301.6653–1, 301.6656–1—301.6658–1, 301.6672–1—301.6674–1, 301.6676–1, 301.6871(a)–2. (Secs. 6601, 6651—6658, 6672—6676, 6871; '54 Code.)

Rev. Rul. 68–574, 1968–2 C.B. 595.

24.8 Bankruptcy; post-petition interest. Non-pecuniary loss penalties and post-petition interest will not be set off against funds due a bankrupt or insolvent taxpayer or estate by the U.S. where such penalties or interest would not be collectible as a claim against the bankrupt or insolvent estate. Rev. Rul. 56–162 revoked. §§301.6601–1—301.6871(a)–2 and intermediate sections. (Secs. 6601, 6651—6658, 6672—6674, 6676, 6871; '54 Code.)

Rev. Rul. 71–31, 1971–1 C.B. 408.

24.9 Barred from assessment; offset against overpayment. Interest and penalties barred by the statute from assessment will be considered in determining the amount of an overpayment allowable on the basis of a timely filed claim for the same taxable year and the same type of tax.§301.6402–1. (Sec. 3770, '39 Code; Sec. 6402, '54 Code.)

Rev. Rul. 56–492, 1956–2 C.B. 949.

24.10 Estate tax; election; remainder interest. Interest on that portion of a deficiency attributable to the inclusion of a reversionary or remainder interest in decedent's gross estate is computed at the rate of four percent per annum from the due date of the tax (15 months after the date of a decedent's death), provided the executor elects to postpone the payment of that portion of the tax until six months after the termination of the precedent interest or interests in the property. (Secs. 6163, 6601; '54 Code.)

Rev. Rul. 56–622, 1956–2 C.B 956.

24.11 Estate tax; election; remainder interest; prepayment of part of postponed tax. An estate that elected to postpone that part of the estate tax attributable to a reversionary or remainder interest may prepay a portion of the outstanding liability without payment of accrued interest or acceleration of the remaining tax. §§20.6163–1, 301.6601–1. (Secs. 6163, 6601; '54 Code.)

Rev. Rul. 83–103, 1983–2 C.B. 238.

24.12 Gift tax; overassessment of spouse. Prior to marriage a gift was made by the husband to a third party, and one-half of the value was included in the gift tax return of each of the spouses with the tax shown to be due on both returns paid by the husband. An overassessment of tax on the wife's return may be applied against a deficiency assessed against the husband and a claim for refund of the overassessment by the wife may be rejected in full.§301.6402–1. (Sec. 6402, '54 Code.)

Rev. Rul. 59–39, 1959–1 C.B. 639.

24.13 Interest on partial payment; allocation. A partial payment of assessed tax, penalty, and interest made by a cash-method taxpayer with directions as to its application will be so applied. A partial payment, on assessed deficiencies or deficiencies mutually agreed to but unassessed received without instructions for its application will be applied to tax, penalty, and interest in that order, starting with the earliest period. Rev. Rul. 58–239 superseded. Modified by Rev. Rul. 79–284. §301.6601–1. (Sec. 6601, '54 Code.)

Rev. Rul. 73–305, 1973–2 C.B. 43.

24.14 Interest rate. Examples are provided for the computation of the 9 percent interest rate on underpayments and overpayments of tax, effective on July 1, 1975, under the provisions of section 6621 of the Code as added by Pub. L. 93–625. §§301.6332–1, 301.6601–1, 301.6602–1, 301.6611–1, 301.7426–1. (Secs. 6332, 6601, 6602, 6611, 6621, 7426; '54 Code.)

Rev. Rul. 75–58, 1975–1 C.B. 374.

24.15 Interest rate; daily compounding rules. Uniform rates and procedures are set forth for computation of interest under the compounding rules established under section 6622. §301.6621–1. (Sec. 601.104, S.P.R.; Secs. 6621, 6622, '54 Code.)

Rev. Proc. 83–7, 1983–1 C.B. 583.

24.16 Interest refunds based on state inheritance tax credit. A decedent's estate is not entitled to a refund of the interest paid on a deficiency that is later reduced by the allowance of a state death tax credit under section 2011(a).

§§20.2011-1, 301.6601-1, 301.6611-1. (Secs. 2011, 6601, 6611; '54 Code.)

Rev. Rul. 79-219, 1979-2 C.B. 401.

24.17 Interest; changes under 1954 Code. The provisions of the Internal Revenue Code of 1954 relating to interest on underpayment, nonpayment, overpayment, or extensions of time for payment, of tax are explained. (Secs. 6601, 6611; '54 Code.)

Rev. Rul. 54-426, 1954-2 C.B. 39.

24.18 Interest; deduction subsequently allowed. A charitable deduction claimed on an estate tax return was disallowed because the deduction did not satisfy the requirements of section 2055(e), but was subsequently allowed when the gift was made to qualify. Interest is due on the deficiency from the due date of the return to the end of a 180-day period following the filing of a claim for credit or refund. §§20.2055-1, 301.6601-1. (Secs. 2055, 6601; '54 Code.)

Rev. Rul. 80-291, 1980-2 C.B. 373.

24.19 Interest; farm; special use value; premature disposal. When an election to specially value property has been made under section 2032A and the property is later disposed of prematurely, interest on the additional estate tax due will be assessed for the period commencing 6 months after the date of disposition. §§20.2032A-8, 20.6151-1, 301.6601-1. (Secs. 2032A, 6151, 6601; '54 Code.)

Rev. Rul. 81-308, 1981-2 C.B. 176.

24.20 Notice; addition to tax; waiver of restrictions. A statutory notice of deficiency must be issued to assess and collect the addition to the tax for late filing by a taxpayer who has signed a waiver of restrictions on assessment and collection with respect to a deficiency but has refused to sign a waiver of the addition to tax for late filing.§§301.6211-1, 301.6213-1, 301.6659-1. (Secs. 6211, 6213, 6659; '54 Code.)

Rev. Rul. 78-20, 1978-1 C.B. 441.

24.21 Notice; fraud discovered after Tax Court decision. The Commissioner may issue a second statutory notice of deficiency asserting an additional income tax deficiency and a fraud penalty when fraud is discovered after a decision of the U.S. Tax Court involving the same taxpayer and taxable year has become final.§301.6212-1. (Sec. 6212, '54 Code.)

Rev. Rul. 73-547, 1973-2 C.B. 406.

24.22 Notice; jeopardy assessment. The tax due upon the jeopardy termination of a taxpayer's taxable year is subject to a deficiency notice as a prerequisite to levy and seizure of the taxpayer's property. §301.6861-1. (Secs. 6211, 6851, 6861; '54 Code.)

Laing, 423 U.S. 161, Ct. D. 1973, 1976-1 C.B. 388.

24.23 Notice; last known address. Taxpayer, who did not file a return, was interviewed while in jail and furnished information that formed the basis for the assessment but did not give the interviewing officers a permanent or temporary address. Duplicate notices of deficiency were sent to the taxpayer at the addresses of an attorney representing a co-defendant and a bail bondsman. *Held,* the notices were not mailed to the taxpayer's "last known address," were insufficient and invalid, and did not serve to give the Court jurisdiction in the case. (Secs. 6212, 6213; '54 Code.)

Patrick Michael O'Brien, 62 T.C. 543, Acq., 1974-2 C.B. 3.

24.24 Notice; taxpayer's last known address. The address of the taxpayer's duly authorized representative shall be regarded as the last known address of the taxpayer in cases where, subsequent to the date on which the taxpayer files a return for the taxable year, or concurrently with such, he files a power of attorney which authorizes the designated attorney to represent him and requests that all communications concerning his tax matters with respect thereto, or concerning a proposed deficiency in tax for that taxable year, be mailed to his attorney's address.§301.6212-2. (Sec. 601.103, S.P.R.; Sec. 6212, '54 Code.)

Rev. Proc. 61-18, 1961-2 C.B. 550.

24.25 Penalties; failure to collect or pay; stay of collection. The bond and sureties requirements of reg. 301.7101-1 will apply to situations involving stay of collection of the 100 percent penalty assessment of section 6672. §§301.6672-1, 301.7101-1. (Secs. 6672, 7101; '54 Code.)

Rev. Rul. 79-170, 1979-1 C.B. 437.

24.26 Priority; claims against an estate. Claims against a decedent's estate for funeral and administrative expenses and a family allowance required to be paid by state law have priority over the tax claims of the government for which the government has no lien. However, such tax claims are superior to claims against the estate for doctor bills from the decedent's last illness and wages due a household employee. §301.6871(a)-2. (Sec. 6871, '54 Code.)

Rev. Rul. 80-112, 1980-1 C.B. 306.

24.27 Prorated to installments; interest. An estate tax deficiency may be prorated to installments and the four percent interest rate is applicable to the entire deficiency, where a timely election was made under section 6166(a) of the Code and the tax was paid before assessment of the deficiency.§§20.6166-1, 301.6601-1. (Secs. 6166, 6601; '54 Code.)

Rev. Rul. 67-161, 1967-1 C.B. 342.

24.28 Restricted interest. If an overpayment is applied as credit to unpaid interest, penalty, or addition to tax for the same year and type of tax, interest is allowed from the date of overpayment to the date of assessment of the amount to which the credit is applied. Rev. Proc. 60-17 modified. §301.6611-1. (Sec. 601.104, S.P.R.; Sec. 6611, '54 Code.)

Rev. Proc. 83-58, 1983-2 C.B. 575.

24.29 Tax Court; interest periods. The terminal dates of interest periods applicable to deficiencies determined by the Tax Court are set forth. (Sec. 292, '39 Code; Sec. 6601, '54 Code.)

Rev. Rul. 56-501, 1956-2 C.B. 954.

24.30 Tax Court; jurisdiction; deficiencies not assessed or claimed in bankruptcy. Taxpayers, after being adjudicated bankrupt but before termination of the bankruptcy proceedings, filed petitions with the Tax Court for redetermination of proposed deficiencies for pre-bankrupt years. The proposed deficiencies were neither assessed nor claimed in the bankruptcy proceedings. Motions were filed on behalf of the Commissioner to dismiss the petitions on the grounds that the Tax Court lacked jurisdiction under section 6871(b) of the Code. *Held,* the prohibition of section 6871(b) of the Code applies only when the deficiency has been assessed under the immediate assessment procedure authorized in section 6871(a) or where a timely proof of claim has been filed with the bankruptcy court; accordingly, the Tax Court has jurisdiction to redetermine the deficiencies. (Secs. 6213, 6871, 7442; '54 Code.)

Samuel J. King, 51 T.C. 851, Acq., 1973-1 C.B. 1; Glenn E. Stevenson, 51 T.C. 970, Acq., 1973-1 C.B. 2.

Delegation of authority
(See: Administration)

Disclosure of information
(See: Publicity of information)

Elections
(See also specific subject headings)

26.1 Estate tax; installment payment; extension of time. An executor's request for an extension of time to pay the first installment of the qualified tax and all of the nonqualified tax, filed with the estate tax return and an election under section 6166 of the Code to pay the qualified tax in ten installments at the expiration of a six-month extension of time to file, may be granted under the exception in section 20.6161-1(b) of the regulations. Amplified by Rev. Rul. 76-51.§§20.6151-1, 20.6161-1, 20.6166-1. (Secs. 6151, 6161, 6166; '54 Code.)

Rev. Rul. 74-499, 1974-2 C.B. 397.

26.2 Estate tax; installment payment; extension of time. An estate that has been granted an extension of time for filing, and that pays the first installment of tax at the same time it files the return and an election to pay the tax in installments, will be considered to have made a timely filed request for an extension of time to pay the first installment. Rev. Rul. 74-499 amplified. §§20.6161-1, 20.6166-1. (Secs. 6161, 6166; '54 Code.)

Rev. Rul. 76-51, 1976-1 C.B. 382.

26.3 Estate tax; installment payment; procedures. Procedures are set forth for processing elections to pay estate tax in installments. Rev. Proc. 60-33 modified. §20.6166-1. (Secs. 601.105, 601.106, S.P.R.; Secs. 6166, 6166A, '54 Code.)

Rev. Proc. 79-55, 1979-2 C.B. 539.

26.4 Estate tax; installment payment; shareholder in small business corporation. The estate of a deceased shareholder that holds stock in a small business corporation solely to facilitate the payment of Federal estate tax will continue to be an eligible shareholder within the meaning of section 1371(a) for the period during which the estate complies with the provisions of section 6166. §20.6166-1. (Secs. 641, 1371, 6166; '54 Code.)

Rev. Rul. 76-23, 1976-1 C.B. 264.

26.5 Installment payment of tax. Procedures are set forth by which the Audit Division of the District Directors' offices will process elections made by executors, administrators, etc., under section 6166 of the Code, to pay estate taxes in installments where an interest in a closely held business is included in the gross estate of a decedent. Modified by Rev. Proc. 79-55. §24.1-1. (Sec. 601.105, S.P.R.; Sec. 6166, '54 Code.)

Rev. Proc. 60-33, 1960-2 C.B. 1012.

26.6 Installment payment of tax; community interest; closely-held businesses. The community interest of a surviving spouse in closely-held businesses cannot be combined with the deceased spouse's interest in order to ascertain whether the percentage requirements are met so as to entitle the executor to elect to pay part or all of the estate tax in two or more installments.§20.6166-2. (Sec. 6166, '54 Code.)

Rev. Rul. 61-91, 1961-1 C.B. 714.

26.7 Installment payment of tax; community property; closely-held business. Attorney's fees were incurred in connection with contesting the inclusion in the decedent's gross estate of certain items of property not subject to claims. The contest involved proceedings in the Tax Court. The fees were paid 60 days after the Tax Court decision became final, but more than three years after the tax return was filed. Such attorney's fees constitute an allowable deduction. Clarified by Rev. Rul. 78-323. §20.2053-8. (Sec. 2053, '54 Code.)

Rev. Rul. 61-59, 1961-1 C.B. 418.

26.8 Installment payment of tax; processing election; closely-held business. Procedures by which the Audit Division of the District Director's offices will process elections made by executors, administrators, etc., to pay estate taxes in installments where an interest in a closely-held business is included in the gross estate of a decedent.§24.1-1. (Sec. 601.105, S.P.R.; Sec. 6166, '54 Code.)

Rev. Proc. 60-33, 1960-2 C.B. 1012.

26.9 Installment payment of tax; stock redemption; closely-held business. An explanation is provided of the application of sections 303 and 6166 when shares of stock are redeemed and an election to pay the estate tax in installments is made. Rev. Rul. 72-188 modified. §20.6166-1. (Secs. 303, 6166; '54 Code.)

Rev. Rul. 86-54, 1986-15 I.R.B. 44.

26.10 Installment payment of tax; stock redemption; closely-held business. Application of sections 303 and 6166 of the Code where shares of stock in an estate are redeemed in each of ten consecutive years and an election is made to pay the estate tax attributable to such stock in ten equal installments.§20.6166-3. (Secs. 303, 6166; '54 Code.)

Rev. Rul. 72-188, 1972-1 C.B. 383.

26.11 Timely; alternate valuation of estate assets. The election to value estate assets under the alternate valuation method is timely exercised where the return in which the election is made is postmarked on or before the due date of the return or before the expiration of any extension of time for filing.§§20.2032-1, 301.7502-1. (Secs. 2032, 7502; '54 Code.)

Rev. Rul. 64-105, 1964-1 (Part 1) C.B. 328.

26.12 Valuation; farms and closely held businesses; special use value; retroactive. Estates that were previously eligible for, but did not timely elect section 2032A valuation, cannot retroactively elect special use valuation under section 421(k)(5) of the Economic Recovery Tax Act of 1981. §20.2032A-1. (Sec. 202A, '54 Code.)

Rev. Rul. 82-62, 1982-1 C.B. 130.

26.13 Written agreement; valuation of property. Guidelines are provided for the filing of a written agreement executed by all parties who have any interest in property that is being valued at its value as a farm or closely held business rather than at its fair market value. §20.2032A-8. (Sec. 601.105, S.P.R.; Sec. 2032A, '54 Code.)

Rev. Proc. 81-14, 1981-1 C.B. 669.

Enrollment

(See: Attorneys and agents)

Evasion of tax

(See: Fraud)

Evidence

(See: Criminal prosecutions; Suits)

Examination of records and returns

(See: Books and records; Returns)

Extension of time

28.1 Estate and gift taxes; overpayment with request; interest. The excess of the amount paid with a request for an extension of time to file over the final tax liability shown on an estate or gift tax return is an overpayment. Interest is due and payable from the last date prescribed for filing the return, determined without regard to any extension, to a date 30 days prior to the date of the refund check. §§20.6081-1, 20.6151-1, 25.6081-1, 25.6151-1, 301.6401-1, 301.6611-1. (Secs. 6081, 6151, 6401, 6611; '54 Code.)

Rev. Rul. 81-189, 1981-2 C.B. 240.

28.2 Estate tax; filing; failure to pay penalty. The penalty imposed by section 6651 of the Code for failure to pay tax timely, will be applied after November 24, 1975, to any Federal tax for which a taxpayer is granted an extension of time to file a return. §§20.6081-1, 20.6151-1, 20.6161-1, 301.7805-1. (Secs. 6081, 6151, 6161, 7805; '54 Code.)

Rev. Rul. 75-364, 1975-2 C.B. 466.

28.3 Estate tax; installment method; annual interest payments; closely held business. Failure to make annual interest payments required by section 6166(f)(1) will not trigger the accelerated payment of unpaid estate tax for the estates of decedents dying on or before December 31, 1981. However, any missed interest payments might be subject to normal collection proceedings including the levy and distraint provisions of section 6331. §20.6166-1. (Sec. 6166, '54 Code.)

Rev. Rul. 82-120, 1982-1 C.B. 203.

28.4 Estate tax; installment method; closely-held business; stock redemption. An explanation is provided of the application of sections 303 and 6166 when shares of stock are redeemed and an election to pay the estate tax in installments is made. Rev. Rul. 72-188 modified. §20.6166-1. (Secs. 303, 6166; '54 Code.)

Rev. Rul. 86-54, 1986-15 I.R.B. 44.

28.5 Estate tax; installment payments; credit for tax on prior transfers. If the estate tax of a transferor decedent is being paid in section 6166 installments, only the amount of installments actually paid is to be used in computing the section 2013 credit for the estate of the transferee decedent. §§20.2013-2, 20.6166-1, 301.6511(a)-1. (Secs. 2013, 6166, 6511; '54 Code.)

Rev. Rul. 83-15, 1983-1 C.B. 224.

28.6 Estate tax; installment payments; deficiency or overpayment; closely held business. Examples illustrate the amount due when installment payments are recomputed because of determinations of deficiencies, overpayments, and changes in the ratio of the value of an interest in a closely held business to the value of the estate. §§20.6166-1, 20.6166A-1, 301.6402-1, 301.6403-1. (Secs. 6166, 6166A, 6402, 6403; '54 Code.)

Rev. Rul. 81-294, 1981-2 C.B 237.

28.7 Estate tax; payment; closely held business; residuary charitable bequest. When expenses are payable out of the residuary estate, the value of the residuary charitable bequest must be reduced by an estimate of the maximum amount of interest that will be payable on federal estate taxes deferred under section 6166A to determine the amount of the charitable deduction allowable under section 2055. The charitable deduction must be reduced by the interest whether the deduction for this administration expense will be taken on the estate's income tax return or the federal estate tax return. §§20.2055-1, 20.6166-1, 20.6166A-1. (Secs. 2055, 6166, 6166A; '54 Code.)

Rev. Rul. 82-6, 1982-1 C.B. 137.

28.8 Estate tax; payment; deduction of interest. Interest payable by an executor electing to pay estate tax in installments is deductible as an administration expense. Rev. Rul. 75-239 revoked. §§20.2053-3, 20.6161-1, 20.6163-1. (Secs. 2053, 6161, 6163, 6166A, 6601; '54 Code.)

Rev. Rul. 78-125, 1978-1 C.B. 292; Charles A. Bahr, Sr., 68 T.C. 74, Acq., 1978-1 C.B. 1.

28.9 Estate tax; payment; deduction of interest. When no waivers were filed under section 642(g), all interest expenses actually incurred on the deferred payment of the federal estate tax are deductible under section 2053(a)(2), even though the interest expenses were claimed on the estate's income tax returns and the period of limitations on assessment of income tax has expired for those years. Under the doctrine of equitable recoupment, the amount of the estate tax overpayment is offset by the deficiencies and the interest on them resulting from the deduction of interest on income tax returns for the years for which the period of limitations on assessment of income tax has expired. §20.2053-3. (Secs. 642, 2053, 6166, 6166A, 6501; '54 Code.)

Rev. Rul. 81-287, 1981-2 C.B. 183.

28.10 Estate tax; payment; first installment. An executor's request for an extension of time to pay the first installment of the qualified tax and all of the nonqualified tax, filed with the estate tax return and an election under section 6166 of the Code to pay the qualified tax in ten installments at the expiration of a six-month extension of time to file, may be granted under the exception in section 20.6161-1(b) of the regulations. Amplified by Rev. Rul. 76-51. §§20.6151-1, 20.6161-1, 20.6166-1. (Secs. 6151, 6161, 6166; '54 Code.)

Rev. Rul. 74-499, 1974-2 C.B. 397.

28.11 Estate tax; payment; first installment. An estate that has been granted an extension of time for filing, and that pays the first installment of tax at the same time it files the return and an election to pay the tax in installments, will be considered to have made a timely filed request for an extension of time to pay the first installment. Rev. Rul. 74-499 amplified. §§20.6161-1, 20.6166-1. (Secs. 6161, 6166; '54 Code.)

Rev. Rul. 76-51, 1976-1 C.B. 382.

28.12 Estate tax; payment; installment method. Farms comprising 75 percent of the decedent's gross estate, operated by tenant farmers under agreements that the decedent would pay 40 percent of the expenses and receive 40 percent of the crops, and in which the decedent had actively participated in the important management decisions, constitute an interest in a closely held business for purposes of the election under section 6166(c) to pay the estate tax in installments. §20.6166-2. (Sec. 6166, '54 Code.)

Rev. Rul. 75-366, 1975-2 C.B. 472.

28.13 Estate tax; payment; installment method. A decedent's ownership of an electing small business corporation engaged in home construction on the decedent's land, a sole proprietorship that developed the land and sold the homes and a business office and warehouse shared with the corporation, constitute an interest in a closely held business for purposes of the election under section 6166(c) to pay the estate tax in installments. However, the decedent's ownership and rental of eight houses was management of investment assets and does not qualify. §20.6166–2. (Sec. 6166, '54 Code.)

Rev. Rul. 75–367, 1975–2 C.B. 472.

28.14 Estate tax; payment; installment method; closely held business. In computing the limitation on the amount of estate tax that may be paid in installments under section 6166A, the value of a decedent's interest as a proprietor in a trade or business carried on as a proprietorship is the net amount a willing purchaser would pay for the interest to a willing seller. §§20.2031–1, 20.2031–3, 20.6166–1. (Secs. 2031, 6166, 6166A; '54 Code.)

Rev. Rul. 80–202, 1980–2 C.B. 363.

28.15 Estate tax; payment; installment method; state death tax credit. A state death tax credit is not equivalent to a payment of estate tax for purposes of avoiding the acceleration of federal estate tax installment payments. §§20.2011–1, 20.6166–3. (Secs. 2011, 6166; '54 Code.)

Rev. Rul. 85–43, 1985–1 C.B. 356.

28.16 Estate tax; payment; installment method; withdrawals. A corporation's payment of an ordinary cash dividend consisting of the entire earnings and profits accumulated before and after the death of the corporation's sole shareholder is a withdrawal of money or other property within the meaning of section 6166(h)(1)(A) to the extent attributable to earnings and profits accumulated before decedent's death. §§20.2032–1, 20.6166–3. (Secs. 2032, 6166; '54 Code.)

Rev. Rul. 75–401, 1975–2 C.B. 473.

28.17 Estate tax; payment; interest; when deductible. Interest charged on the extended payment of federal estate tax is deductible when the interest accrues. No deduction is allowable on the estate tax return for an estimate of interest expense to be incurred in the future. §20.2053–3. (Secs. 2053, 6161, 6163, 6166, 6166A; '54 Code.)

Rev. Rul. 80–250, 1980–2 C.B. 278.

28.18 Estate tax; payment; investment assets. A decedent's commercial and farm rental properties and notes receivable aggregating more than 35 percent of his estate and all managed and maintained by the decedent's business office do not constitute under section 6166(c) an interest in a closely held business for purposes of the election to pay the estate tax in installments. §20.6166–2. (Sec. 6166, '54 Code.)

Rev. Rul. 75–365, 1975–2 C.B. 471.

28.19 Estate tax; payment; procedures. Procedures are set forth for processing elections to pay estate tax in installments. Rev. Proc. 60–33 modified. §20.6166–1. (Secs. 601.105, 601.106, S.P.R.; Secs. 6166, 6166A, '54 Code.)

Rev. Proc. 79–55, 1979–2 C.B. 539.

28.20 Estate tax; payment; royalty interests; oil and gas properties. The ownership, exploration, development, and operation of oil and gas properties constitutes a "trade or business", and the estate tax attributable thereto may be paid in installments if the estate otherwise qualifies. However, the mere ownership of royalty interests in oil properties does not constitute a "trade or business", and the deferred payment right is not applicable to the portion of decedent's estate which consists of such royalty interests. §20.6166–2. (Sec. 6166, '54 Code.)

Rev. Rul. 61–55, 1961–1 C.B. 713.

28.21 Estate tax; prepayment of part of postponed tax; remainder interest. An estate that elected to postpone that part of the estate tax attributable to a reversionary or remainder interest may prepay a portion of the outstanding liability without payment of accrued interest or acceleration of the remaining tax. §§20.6163–1, 301.6601–1. (Secs. 6163, 6601; '54 Code.)

Rev. Rul. 83–103, 1983–2 C.B. 238.

28.22 Estate tax; valuation; Treasury bonds; redeemed to pay tax. Under section 2031, the value of the decedent's Treasury bonds that could have been applied toward the portion of the federal estate tax that was deferred under section 6166 is their par value. §§20.2031–2, 20.6161–1, 20–6163–1, 20.6166–1, 20.6166A–1. (Secs. 2031, 6161, 6163, 6166, 6166A; '54 Code.)

Rev. Rul. 81–228, 1981–2 C.B. 171.

28.23 Failure to file; addition to tax. An estate or donor of a gift is subject to the addition to the tax for failure to file timely when the tax due on the return is paid with the filing for an extension of time but the return is not filed until after the period covered by the extension, and reasonable cause is not established. §§20.6075–1, 25.6075–1, 20.6081–1, 25.6081–1, 20.6151–1, 25.6151–1, 20.6161–1, 25.6161–1, 301.6651–1. (Secs. 6075, 6081, 6151, 6161, 6651; '54 Code.)

Rev. Rul. 81–237, 1981–2 C.B. 245.

28.24 Limitation period; Form 872–A; assessments. Conditions are set forth with respect to the acceptance by Appeals officials and District Directors of Internal Revenue of Form 872–A, Special Consent to Extend the Time to Assess Tax. Form 872–A, accepted in place of Form 872, relieves taxpayers and the Service from the inconvenience of obtaining renewal consents. Rev. Proc. 71–11 superseded. §301.6501(c)–1. (Sec. 601.105, S.P.R.; Sec. 6501, '54 Code.)

Rev. Proc. 79–22, 1979–1 C.B. 563.

28.25 Payment; changes under 1954 Code. The provisions of the 1954 Code relating to interest on underpayment, nonpayment, overpayment, or extension of time for payment, of tax are explained. (Secs. 6601, 6611; '54 Code.)

Rev. Rul. 54–426, 1954–2 C.B. 39.

28.26 Payment of estate tax; deferred income plan; reversionary or remainder interest. The installment payments due under a deferred income plan that provided no payment method other than installments contingent solely on the passage of time, left by the deceased husband to the decedent who bequeathed those remaining at her death to her children, did not constitute a reversionary or remainder interest for the postponement of estate tax payment permitted by section 6163(a) of the Code. §20.6163–1. (Sec. 6163, '54 Code.)

Rev. Rul. 73–311, 1973–2 C.B. 405.

Forms

(See also: Returns)

30.1 Bulk quantities to preparers; shipping charge. The handling and shipping charge for furnishing bulk quantities of forms to paid preparers is adjusted. Rev. Proc. 81–47 superseded. (Sec. 601.602, S.P.R.)

Rev. Proc. 82–54, 1982–2 C.B. 845.

30.2 Estate tax; L–118; discharge of personal liability. The legal representative of an estate may use the letter Form L–118, together with proof of payment, to establish that his personal liability for the estate tax has been satisfied. §20.2204–1. (Sec. 601.104, S.P.R.; Sec. 2204, '54 Code.)

Rev. Proc. 70–10, 1970–1 C.B. 437.

30.3 Reproduction; copyright. No copyright may be obtained by a private person for any Federal tax form or any reproduction of such form. Persons reproducing these forms commercially for sale to the public should not include in advertising matter, issued to promote such sale, anything which gives the impression that these forms have been made the subject of a copyright. (Sec. 54, '39 Code; Secs. 6018, 6019, '54 Code.)

Rev. Rul. 54–166, 1954–1 C.B. 83.

30.4 211; informants' reward. A new Form 211, Public Voucher for Reward for Original Information, has been approved for use by informants in applying for reward. The use of Form 211 applies to original information furnished to internal revenue officers leading to detection of violation of the internal revenue laws and to the recovery of internal revenue taxes, penalties, fines, and forfeitures. (Sec. 3792, '39 Code; Sec. 7623, '54 Code.)

Rev. Rul. 140, 1953–2 C.B. 470.

30.5 2297; waiver of registered notice of disallowance. A taxpayer may execute a waiver, Form 2297, Waiver of Registered Mail Notification of Claim Disallowance, of the requirement that a registered notice of disallowance of a claim be issued where an agreement is secured at the conclusion of an investigation or conference. A taxpayer may request the opportunity to execute the waiver at any time prior to issuance of the registered notice. §301.6532–1. (Sec. 601.602, S.P.R.; Sec. 6532, '54 Code.)

Rev. Proc. 57–12, 1957–1 C.B. 740.

30.6 2848; power of attorney; request for prompt determination of tax liability. A request for prompt determination of estate tax liability and discharge of an executor from personal liability under the provisions of section 2204 of the Code may be made by an attorney duly authorized by the executor through a properly executed Form 2848, General Power of Attorney, or Form 2848–A, Limited Power of Attorney, to act in all matters relating to the estate tax liability. §20.2204–1. (Sec. 2204, '54 Code.)

Rev. Rul. 65–186, 1965–2 C.B. 380.

30.7 656; offers in compromise. Form 656, Offer in Compromise, will be used in submitting all offers in compromise. It supersedes prior Form 656 used for submitting cash offers and Form 656–C used for submitting deferred payment offers. (Sec. 601.203, S.P.R.; Sec. 7122, '54 Code.)

Rev. Proc. 57–41, 1957–2 C.B. 1119.

30.8 706; estate tax return. The Estate Tax Return, Form 706 (Revised December 1953), reflects late statutory changes. Some of the subject matter has been rearranged in a more logical sequence, the instructions have been amplified, obsolete material has been deleted, and there has been added a new Schedule S, "Credit for Foreign Death Duties," which must accompany each claim for refund of tax based in whole or in part on the allowance of credit for foreign death taxes. Mim. 5872 and Mim. 6117 superseded; Rev. Rul. 54–169 remains in full force and effect. §81.65. (Sec. 821, '39 Code; Secs. 6018, 6065, '54 Code.)

Rev. Rul. 54–209, 1954–1 C.B. 199.

30.9 706CE; evidence of payment of foreign death taxes. Form 706CE, Certification of Payment of Foreign Death Duty, has been issued for use in evidencing the payment of foreign death taxes in all cases where credit therefor, whether pursuant to the Internal Revenue Code or any death duty convention, is claimed against the Federal estate tax. §81.9. (Secs. 813(c), 936(c), '39 Code; Sec. 2014, '54 Code.)

Rev. Rul. 54-169, 1954-1 C.B. 198.

30.10 712; life insurance statement. The Bureau will not require Form 712, Life Insurance Statement, to be filed in duplicate with a Federal estate tax return, Form 706. §§81.65, 81.66. (Sec. 821, '39 Code; Secs. 6018, 6065, '54 Code.)

Rev. Rul. 49, 1953-1 C.B. 396.

30.11 872-A; limitation period extension; assessments. Conditions are set forth with respect to the acceptance by Appeals officials and District Directors of Internal Revenue of Form 872-A, Special Consent to Extend the Time to Assess Tax. Form 872-A, accepted in place of Form 872, relieves taxpayers and the Service from the inconvenience of obtaining renewal consents. Rev. Proc. 71-11 superseded. §301.6501(c)-1. (Sec. 601.105, S.P.R.; Sec. 6501, '54 Code.)

Rev. Proc. 79-22, 1979-1 C.B. 563.

Fraud
(See also: Criminal prosecutions; Penalties; Suits)

32.1 Evidence; remand for new trial. A case must be remanded to the District Court for the limited purpose of determining the truth of certain alleged voluntary disclosures made by corporate officers with a view to obtaining immunity prior to tax evasion prosecution where newly discovered evidence, adduced by the Government on its motion to remand, casts grave doubts as to the truth of these disclosures, tainting and rendering suspect the entire record. See 371 U.S. 341. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Shotwell Manufacturing Co., 355 U.S. 233, Ct. D. 1814, 1958-1 C.B. 535.

32.2 Evidence; voluntary disclosure policy. The taxpayers made disclosures under the Treasury Department's then voluntary disclosure policy (which promised immunity to taxpayers from criminal prosecution if the disclosure was made before investigation). Fraudulent disclosures were made by the taxpayers. The evidence disclosed was used at the trial in which taxpayers were convicted of willful attempted evasion of Federal income tax. *Held*, the disclosures are admissible in evidence where fraudulent. The admission of the disclosed evidence did not offend the self-incrimination clause of the Fifth Amendment. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Shotwell Manufacturing Co., 371 U.S. 341, Ct. D. 1876, 1963-1 C.B. 365.

32.3 Felony and misdemeanor statutes. A taxpayer who willfully attempted to evade Federal income taxes by filing a false return was properly convicted of a felony rather than a misdemeanor since the scope of the misdemeanor provision had been shrunk by a series of specific enactments that had the potency of implied repeal. §39.145-1. (Secs. 145, 3616, '39 Code; Secs. 7201, 7207, '54 Code.)

Achilli, 353 U.S. 373, Ct. D. 1810, 1957-2 C.B. 905.

32.4 Felony and misdemeanor statutes; jury instruction. Where the charge for tax evasion against a defendant was made a felony, he is not entitled to a jury instruction that he could be found guilty of a misdemeanor, even though the facts necessary to prove either charge would be the same. §39.145-1. (Secs. 145, 3616, '39 Code; Secs. 7201, 7207, 7210, '54 Code.)

Berra, 351 U.S. 131, Ct. D. 1797, 1956-1 C.B. 644.

32.5 Hearsay evidence as basis of indictment. A defendant may be required to stand trial for willful evasion of taxes and a conviction may be sustained even though indictment by the grand jury was based solely on the hearsay evidence of government agents. §39.145-1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Costello, 350 U.S. 359, Ct. D. 1794, 1956-1 C.B. 639.

32.6 Lesser-included offense; jury charge. In a criminal prosecution for the felony offense of willfully attempting to evade and defeat income tax, the taxpayer was not entitled to a lesser-included offense charge of a misdemeanor under either section 7203 or 7207 of the Code. A lesser-included offense charge is not proper where, on the evidence presented, the factual issues to be resolved by the jury are the same as to both the lesser and greater offenses. §301.7207-1. (Secs. 7201, 7203, 7207; '54 Code.)

Sansone, 379 U.S. 886, Ct. D. 1894, 1965-2 C.B. 451.

32.7 Meaning of "willfully"; felony or misdemeanor. The word "willfully" has the same meaning in section 7206 of the Code under which it is a felony for a person to make and subscribe to a return or document which he does not believe to be true and correct in every material matter as it does in section 7207 under which it is a misdemeanor for a person to deliver or disclose a return or document known by him to be fraudulent or false in any material matter. The distinction between the statutes is in the additional misconduct that is essential to the violation of the felony provision. §301.7207-1. (Secs. 7206, 7207; '54 Code.)

Bishop, 412 U.S. 346, Ct. D. 1958, 1973-2 C.B. 417.

32.8 Meaning of "willfully." The word "willfully" as used in section 7206 means a voluntary, intentional violation of a known legal duty. (Sec. 7206, '54 Code.)

Pomponio, 429 U.S. 10, Ct. D. 1981, 1976-2 C.B. 446.

32.9 Preliminary hearing on evidence. It is not a violation of due process to deny a preliminary hearing based on the unsupported suspicions of the defendant to ascertain whether evidence taken in violation of defendant's rights before a 1952 Grand Jury was used directly or derivatively before a 1953 Grand Jury which returned indictment or to allow tainted evidence to be admitted where defendant's counsel has consciously and intentionally waived objection to its receipt. §39.145-1. (Secs. 145, 3793, '39 Code; Secs. 7201, 7206, '54 Code.)

Lawn, 355 U.S. 339, Ct. D. 1817, 1958-1 C.B. 540.

Information
(See: Publicity of information; Returns)

Inspection of records or returns
(See: Books and records; Returns)

Interest
(See: Deficiencies; Overpayments)

Jeopardy assessments
(See: Assessments)

Levy

38.1 Certificates of deposit. Money on deposit in a bank, represented by certificates of deposit in the hands of a delinquent taxpayer, is within the scope of a bank account and subject to levy. I.T. 2504 superseded. Modified by Rev. Rul. 75-355. §301.6331-1. (Sec. 6331, '54 Code.)

Rev. Rul. 73-12, 1973-1 C.B. 601.

38.2 Certificates of deposit; negotiable. A Government levy on a delinquent taxpayer's funds represented by a negotiable certificate of deposit may be made only by presenting and surrendering the negotiable certificate to the maker. Rev. Rul. 73-12 modified. §301.6331-1. (Sec. 6331, '54 Code.)

Rev. Rul. 75-355, 1975-2 C.B. 478.

38.3 Checking account; partnership. A partnership checking account in a bank is property of the partnership and is not subject to levy to satisfy the tax assessed against an individual partner. I.T. 3356 superseded. §301.6331-1. (Sec. 6331, '54 Code.)

Rev. Rul. 73-24, 1973-1 C.B. 602.

38.4 Commissions applied against employee's overdrawn account; "expense money." Commissions earned which are applied by the employer as a credit against an employee's overdrawn account and "expense money" advanced under an arrangement whereby it must be accounted for by the employee are not subject to levy and distraint for unpaid taxes. G.C.M. 5251 superseded. §§301.6331-1, 301.6332-1. (Secs. 6331, 6332; '54 Code.)

Rev. Rul. 73-365, 1973-2 C.B. 407.

38.5 Corporation transfer of security titles or payments after service. Questions and answers are presented relating to a corporation's obligations under section 6332 concerning the transfer of title in stocks and bonds by registered owners and the payment of dividends and interest after the service of a notice of levy. §§301.6331-1, 301.6332-1. (Secs. 6331, 6332; '54 Code.)

Rev. Rul. 75-554, 1975-2 C.B. 478.

38.6 Distraint; rights of third party; summary trial. A Federal District Court has no jurisdiction to determine, in a summary proceeding, the respective rights of the parties in property of a taxpayer seized by the Government for delinquent taxes; petitioner, a third party claimant, could have its claim to the distrained property adjudicated in a plenary, but not in a summary, proceeding. §301.6331-1. (Sec. 6331, '54 Code.)

New Hampshire Fire Insurance Co., 362 U.S. 404, Ct. D. 1846, 1960-1 C.B. 629.

38.7 Exempt property; unemployment benefits. Notice of levy to collect delinquent Federal taxes should not be served upon a State employment commission for the purpose of reaching weekly benefits payable to an unemployed taxpayer. (Sec. 3692, '39 Code; Secs. 6331, 6334, '54 Code.)

Rev. Rul. 54–171, 1954–1 C.B. 282.

38.8 Future receipts. Where a taxpayer has an unqualified fixed right, under a trust or a contract, or through a chose in action, to receive periodic payments or distributions of property, a Federal lien for unpaid tax attaches to the taxpayer's entire right, and a notice of levy based on such lien is effective to reach, in addition to payments or deductions then due, any subsequent payments or distributions that will become due thereunder. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Rev. Rul. 55–210, 1955–1 C.B. 544.

38.9 Interest rate. Examples are provided for the computation of the 9 percent interest rate on underpayments and overpayments of tax, effective on July 1, 1975, under the provisions of section 6621 of the Code as added by Pub. L. 93–625. §§301.6332–1, 301.6601–1, 301.6602–1, 301.6611–1, 301.7426–1. (Secs. 6332, 6601, 6602, 6611, 6621, 7426; '54 Code.)

Rev. Rul. 75–58, 1975–1 C.B. 374.

38.10 Joint bank accounts; bank's liability. The Service had a right to levy on joint bank accounts for delinquent income taxes owed by only one of the persons in whose names the accounts stood. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

National Bank of Commerce, 472 U.S., Ct. D. 2031, 1985–32 I.R.B. 11.

38.11 Joint checking account. A joint checking account is subject to levy only to the extent of a taxpayer's interest therein. Factors bearing on the question of the extent of a taxpayer's interest in a joint checking account include the nature of the tenancy created under State law, the source of the funds deposited, the intent of the person opening the joint account, and whether in actual practice the account was under the control of one party even though the other had authority to withdraw funds from the account. §301.6331–1. (Sec. 6331, '54 Code.)

Rev. Rul. 55–187, 1955–1 C.B. 197.

38.12 Priority in bankruptcy; levy upon assignee. A valid notice of levy served upon an assignee for the benefit of creditors, before the filing of a petition in bankruptcy but after the assigned assets were converted to cash, gave the Service constructive custody of the cash proceeds in the assignee's possession and neither the bankrupt nor the petitioner as receiver could assert a claim to the proceeds. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Phelps, 421 U.S. 330 , Ct. D. 1971, 1975–1 C.B. 372.

38.13 Property subject to distraint. A Federal tax lien may be asserted against intangible property such as a debt owed to a taxpayer; service of a levy against the taxpayer's debtor is effective to give the government possession of the property, even though notice of the lien had not been filed in accordance with local state law. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Eiland, 223 F. 2d 118, Ct. D. 1789, 1956–1 C.B. 693.

38.14 Seizure from transferee of delinquent taxpayer. An automobile or other personal property disposed of by a delinquent taxpayer after notice of a Federal tax lien has been properly filed may be seized from a third party and sold under a warrant or distraint, provided such property can be identified as property covered by the lien. (Sec. 3692, '39 Code; Secs. 6331, 6334, '54 Code.)

Rev. Rul. 54–257, 1954–2 C.B. 429.

38.15 State employees' salaries. A state is a person, and its accrued salary obligations to state employees are subject to Federal tax levy. The state auditor who, under state law, is obligated with respect to the salaries covered by the levies, is personally liable in a sum equal to the amount, not exceeding the delinquent taxes, which he refused to surrender to the Government but instead surrendered to taxpayers in defeat of the Government's levies. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Sims, 359 U.S. 108, Ct. D. 1837, 1959–1 C.B. 636.

38.16 Taxpayer's bank account. A bank is required to pay over only the funds actually on hand at the time the levy was served on a delinquent taxpayer's bank account and not the amount indicated in its acknowledgment of service. G.C.M. 4783 superseded. Amplified by Rev. Rul. 79–38. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Rev. Rul. 73–310, 1973–2 C.B. 408.

38.17 Taxpayer's bank account. A bank is required to treat uncollected funds in a customer's account as subject to levy if, by custom or agreement between the bank and the customer, the customer has a legal, fixed right to draw against uncollected funds. Rev. Rul. 73–310 amplified. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Rev. Rul. 79–38, 1979–1 C.B. 406.

38.18 Wages; state employee. A notice of levy may be served on an instrumentality of a State to reach the accrued wages due an employee of that instrumentality in order to obtain satisfaction of his unpaid Federal taxes. I.T. 2405 modified. §301.6331–1. (Sec. 3710, '39 Code; Sec. 6331, '54 Code.)

Rev. Rul. 55–227, 1955–1 C.B. 551.

38.19 Warrantless seizures. The warrantless entry into the business office of a corporation that was a delinquent taxpayer's alter ego and seizure of the contents of the office under section 6331 violated the Fourth Amendment. However, warrantless automobile seizures in public streets, parking lots, or other open areas involved no invasion of privacy and were not unconstitutional. §301.6331–1. (Sec. 6331, '54 Code.)

G. M. Leasing Corp., 429 U.S. 338, Ct. D. 1983, 1977–1 C.B. 389.

Liability for tax

40.1 Beneficiary of living trust. The beneficiary of a living trust created in 1941 by the deceased was not personally liable for the decedent settlor's estate tax assessed in 1956 on that trust, for she did not qualify as a "transferee" or "beneficiary" under section 827(b). The classes of individuals in section 827(b) are described under section 811 of the Code, which provides a "transferee" must receive the transfer in contemplation of the decedent's death, and a "beneficiary" pertains solely to beneficiaries of insurance proceeds, neither of which described the petitioner. (Secs. 811, 827(b), 900, '39 Code; Secs. 2055, 6901, '54 Code.)

Patricia B. Englert, 32 T.C. 1008, Acq., 1960–1 C.B. 4.

40.2 Discharge of personal liability; court appointment of successor. A deceased's personal representative under the will, who did not file an application for discharge from personal liability, will not be discharged from personal liability in the event of default in installment payments of estate tax by a successor representative appointed by court order. §20.2204–1. (Sec. 2204, '54 Code.)

Rev. Rul. 76–114, 1976–1 C.B. 290.

40.3 Discharge of personal liability; legal representative of estate. The legal representative of an estate may use the letter Form L–118, together with proof of payment, to establish that his personal liability for the estate tax has been satisfied. §20.2204–1. (Sec. 601.104, S.P.R.; Sec. 2204, '54 Code.)

Rev. Proc. 70–10, 1970–1 C.B. 437.

40.4 Discharge of personal liability; trustees of estate. Where an executor of a decedent's estate has been duly appointed and acting as such, the trustees of an inter vivos trust created by the decedent, the assets of which were included in his gross estate, are not entitled to a certificate of discharge from personal liability. (Sec. 2204, '54 Code.)

Rev. Rul. 57–424, 1957–2 C.B. 623.

40.5 Estate tax; transferee. A bank-trustee of a revocable trust, created under an agreement that the net income from the trust be paid to the transferor while living and that the trust corpus be distributed to the decedent's estate at the transferor's death, is not subject to transferee liability for estate tax. §§20.2033–1, 20.2036–1, 20.2037–1, 20.2038–1, 301.6324–1. (Secs. 2033, 2036, 2037, 2038, 6324; '54 Code.)

Rev. Rul. 75–553, 1975–2 C.B. 477.

40.6 Executor or administrator; unpaid tax of decedent. Where an executor or administrator has neither personal knowledge of an unpaid income tax liability of decedent nor such knowledge as would put a reasonably prudent man on inquiry, he cannot be held personally liable for the tax payment under section 3467 of the Revised Statutes. §§301.6501(d)–1, 301.6901–1. (Secs. 6501, 6901; '54 Code.)

Rev. Rul. 66–43, 1966–1 C.B. 291.

40.7 Executor or administrator; unpaid tax of decedent. A decedent's unpaid federal income tax and related interest and penalties exceeded the value of the assets of the estate. The executor was chargeable with knowledge of these liabilities, but exhausted the estate by paying state income taxes and debts to general creditors and making mortgage payments on the decedent's residence in which the decedent's interest was extinguished at death by operation of state law. The executor is personally liable under section 3467 of the Revised Statutes, and this liability may be assessed under section 6901 of the Code. §301.6901–1. (Sec. 6901, '54 Code.)

Rev. Rul. 79–310, 1979–2 C.B 404.

40.8 Insurance company as transferee or trustee. An estate tax return was filed for the decedent, who died in 1945, and a deficiency was determined. All the assets of the estate had been distributed and there remained no assets to pay the deficiency. Decedent was insured by a mutual life insurance company and had made provisions with the company that the proceeds of the insurance should be paid to the beneficiaries in installments on the happenings of certain contingencies. These proceeds were includible in the decedent's gross estate. *Held,* the insurer is not liable for Federal estate tax as a transferee or trustee. The insurance company stands in a debtor relationship to the insured with the beneficiaries of the proceeds considered as trustees. (Secs. 811(g), 827(b), '39 Code; Secs. 2042, 6324, '54 Code.)

The Equitable Life Assurance Society of the United States, 19 T.C. 264, Acq., 1953–1 C.B. 4.

40.9 Transferee; community property; Louisiana. Louisiana community property funds were used to pay the premiums on an insurance policy, applied for by the husband, on the now deceased wife whose estate included no part of the proceeds. *Held,* the husband is not liable as a transferee either for the deficiency in estate tax by reason of the legal usufruct of the surviving spouse under State law or for the insurance proceeds received. (Sec. 6901, '54 Code.)

William E. Bergman, 66 T.C. 887, Acq., 1976–2 C.B. 1.

40.10 Transferee; offers in compromise. The acceptance of an offer in compromise from one transferee does not compromise the liabilities of the transferor or the other transferees. The amount paid is credited against the transferor's tax. The balance of the transferor's liability continues outstanding and may be collected from the other transferees or the transferor. The amount accepted is not credited against the liabilities of the transferees; however, their liabilities may be affected. G.C.M. 9252 superseded. §§301.6901–1, 301.7122–1. (Secs. 6901, 7122; '54 Code.)

Rev. Rul. 72–436, 1972–2 C.B. 643.

40.11 Transferee; reassignment of stock after notice of liability. The father, against whom deficiencies and penalties had been assessed, assigned shares of stock on the books of the corporation to his son, a minor. The son had no knowledge of this intended gift. Upon receipt of notice that the Government intended to make him liable as a transferee, the son reassigned the shares to his father. *Held*, the reassignment was an effective repudiation of the intended gift and, therefore, the son was not liable as a transferee. (Sec. 311(a), '39 Code; Sec. 6901, '54 Code.)

Donald Ginsberg, 35 T.C. 1148, Acq., 1961–2 C.B. 4.

40.12 Trustee and life beneficiary; tax on remainder interest. The taxpayer was the sole trustee and sole income [life] beneficiary of a trust in which a decedent had a remainder interest. The assets of the decedent's estate, exclusive of the remainder interest, were insufficient to pay the estate tax computed on an estate including the value of the remainder interest. *Held*, the taxpayer was not a fiduciary of the remainder interest, but rather held a present interest for himself, and therefore could not be required to pay part of the tax assessed on the decedent's estate out of his present interest. (Sec. 6903, '54 Code.)

John Grimm, 43 T.C. 623, Acq., 1965–2 C.B. 5.

40.13 Trustee in bankruptcy; taxes incurred by debtor in possession. Where an arrangement proceeding under Chapter XI of the Bankruptcy Act is terminated and a petition in bankruptcy is filed before taxes become payable, a superseding trustee is not liable for interest on taxes incurred by the debtor in possession during the arrangement proceeding. Since no interest on any of the taxes accrued beyond the period of the arrangement proceeding, no interest could accumulate on a trust fund composed of withholding and cabaret taxes incurred by the debtor in possession which did not become payable until after the arrangement proceeding was terminated. The superseding trustee is liable for penalties for failure to file timely returns. §§1.6012–3, 301.6011–1, 301.6601–1, 301.6659–1. (Secs. 6011, 6012, 6601, 6659; '54 Code.)

Nicholas, 384 U.S. 678, Ct. D. 1912, 1966–2 C.B. 511.

Liens

42.1 Bankruptcy; penalties. Federal tax penalties against the estate of a bankrupt are prohibited by Section 57(j) of the Bankruptcy Act, even though the penalties constitute liens perfected before bankruptcy. §301.6321–1. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Simonson, 369 U.S. 38, Ct. D. 1867, 1962–1 C.B. 302.

42.2 Certificates of discharge of property from liens. A certificate of discharge of property from a Federal tax lien will not be issued to applicants when the subject property has been sold at a foreclosure sale commenced by the holder of an incumbrance senior in right to a junior Federal tax lien and the applicable state law provides that such proceeding discharges all junior liens. §301.6325–1. (Sec. 6325, '54 Code.)

Rev. Rul. 61–19, 1961–1 C.B. 715.

42.3 Certificates relating to liens. Information required in an application for a certificate of discharge of property by substitution of sales proceeds or an application for subordination of tax lien is set forth.§400.2–1. (Sec. 6325, '54 Code.)

Rev. Proc. 68–8, 1968–1 C.B. 754; Rev. Proc. 68–9, 1968–1 C.B. 756.

42.4 Estate tax; decedent's stock pledged to pay tax. Shares of stock included in decedent's estate pledged by the executor to secure funds for the payment of estate tax are divested of the special lien for estate taxes to the extent that the funds are so used. §301.6324–1. (Sec. 6324, '54 Code.)

Rev. Rul. 56–529, 1956–2 C.B. 948.

42.5 Estate tax; farms; special use value; state death tax credit. The section 2011 credit, used under section 2032A(c)(2)(C) in computing what would have been the estate tax liability but for the section 2032A election, is derived with respect to three different types of state death tax statutes. The computation is made for the purpose of determining the amount of the lien imposed by section 6324B. §20.2011–1. (Secs. 2011, 2032A, 624B; '54 Code.)

Rev. Rul. 82–35, 1982–1 C.B. 128.

42.6 Estate tax; joint bank account; nonresident decedent. A bank in possession of property standing in the name of a nonresident decedent and his wife as joint tenants, with right of survivorship, is not relieved from Federal estate tax liability and the necessity of obtaining a transfer certificate should an executor or administrator be appointed, qualified, and acting within the U.S. §81.62. (Sec. 827(b), '39 Code; Sec. 6324, '54 Code.)

Rev. Rul. 55–160, 1955–1 C.B. 464.

42.7 Estate tax; joint tenant liability. The surviving tenant of jointly owned or entirety property, which is included in a decedent's gross estate, is personally liable for the estate tax if not paid when due to the extent of the value of such property at the time of the decedent's death. Any part of such property, which is transferred by the surviving tenant to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth, is divested of the lien, but a like lien shall then attach to all the property of such surviving tenant or spouse. §301.6324–1 (Sec. 6324, '54 Code.)

Rev. Rul. 56–144, 1956–1 C.B. 563.

42.8 Estate tax; priority. Purchasers and holders of liens or security interests in property includible in gross estate under section 2033 of the Code are not protected against Federal estate tax liens except as specifically provided in section 6324. G.C.M. 2663 superseded. §301.6324–1. (Sec. 6324, '54 Code.)

Rev. Rul. 69–23, 1969–1 C.B. 302.

42.9 Estate tax; transferee liability. A bank-trustee of a revocable trust, created under an agreement that the net income from the trust be paid to the transferor while living and that the trust corpus be distributed to the decedent's estate at the transferor's death, is not subject to transferee liability for estate tax. §§20.2033–1, 20.2036–1, 20.2037–1, 20.2038–1, 301.6324–1. (Secs. 2033, 2036, 2037, 2038, 6324; '54 Code.)

Rev. Rul. 75–553, 1975–2 C.B. 477.

42.10 Extinguishment; state foreclosure proceedings. State proceedings to satisfy mortgages or deeds of trust through a foreclosure sale of the property involved, where applicable state law provided that all junior liens were discharged by such proceedings, effectively extinguished junior Federal tax liens, even though the U. S. was not a party thereto and was not required under state law to be a party. State law is effective to divest Government junior liens in cases such as these until Congress determines otherwise. (Secs. 7403, 7424; '54 Code.)

Brosnan, 363 U.S. 237, Ct. D. 1859, 1961–1 C.B. 733.

42.11 Future receipts. Where a taxpayer has an unqualified fixed right, under a trust or a contract, or through a chose in action, to receive periodic payments or distributions of property, a Federal lien for unpaid tax attaches to the taxpayer's entire right, and a notice of levy based on such lien is effective to reach, in addition to payments or deductions then due, and subsequent payments or distributions that will become due thereunder. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Rev. Rul. 55–210, 1955–1 C.B. 544.

42.12 Insurance policy; cash surrender value. The government's lien for unpaid taxes attaches to the cash surrender value of certain insurance policies when the assessment list is received by the Director of Internal Revenue. Where the insured taxpayer later flees the country, the lien may be foreclosed although such taxpayer is given notice by publication only. The court decree directing the insurer to pay the value of the policies to the U.S. will protect the insurer from further liability under the policy. (Secs. 3678, 3710, '39 Code; Secs. 6332, 7403, '54 Code.)

Metropolitan Life Insurance Co., 256 F.2d 17, Ct. D. 1833, 1959–1 C.B. 700.

42.13 Insurance policy cash surrender value; marshaling of assets. A junior income tax lien on the cash surrender value of life insurance policies, the proceeds of which are payable to the insured's widow, attaches only to that portion of the cash surrender value not used in satisfaction of a senior lien on the "net proceeds of the policy when it becomes a claim by death." The court adopts the state rule and refuses to extend the equitable doctrine of marshaling assets where, under state law, proceeds of the policies are exempt from levy by creditors of the insured. §301.6321–1. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Meyer, 375 U.S. 233, Ct. D. 1886, 1964–1 (Part I) C.B. 495.

42.14 Liability of bank; building and loan association; insurance company. The Government will not assert tort liability against an insurance company, a bank, or a domestic building and loan association acting in the ordinary course of business, even though they possess actual notice or knowledge of the existence of a Federal tax lien (such as from a previous unsatisfied levy), with respect to payments made to an insured or depositor (or his order). Rev. Ruls. 56–48, 57–367, 58–470, 63–54 superseded. §301.6321–1. (Sec. 6321, '54 Code.)

Rev. Rul. 67–162, 1967–1 C.B. 356.

42.15 Notice; certificates of discharge or release; acknowledgment. District Directors are not required to acknowledge notices of tax liens, certificates of release of lien, certificates of discharge of property subject to lien, and other instruments required or authorized to be filed under sections 6323 and 6325 of the Code. G.C.M.

26419 superseded. §§301.6323–1, 301.6325–1. (Secs. 6323, 6325; '54 Code.)

Rev. Rul. 71–466, 1971–2 C.B. 409.

42.16 Notice; foreclosure sale by senior lienor. Under the provisions of section 7425(b) and (c) of the Code, notices of sales on certain property to be sold as a result of foreclosure action are required to be furnished to district directors where the U.S. Government has or claims a Federal tax lien. (Sec. 601.104, S.P.R.; Sec. 7425, '54 Code.)

Rev. Proc. 67–25, 1967–1 C.B. 626.

42.17 Notice: place for filing. The Service is eliminating its dual filing of notices of Federal tax liens with respect to personal property in Massachusetts after June 12, 1977, and will file such notices only in the office of the U.S. district court for the judicial district in which the taxpayer resides or, if State law is amended to comply with section 6323(f), only in the one office designated by State law. Rev. Ruls. 64–170, 64–252, and 66–63 superseded. Modified by Rev. Rul. 84–148. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Rul. 77–61, 1977–1 C.B. 388.

42.18 Notice; place for filing; Cook County, Illinois. On and after July 1, 1967, the place for filing notices of Federal tax liens with respect to real property in Cook County, Illinois, is the Recorder of Deeds for that County. Rev. Proc. 67–15 superseded. (Sec. 6323, '54 Code.)

Rev. Proc. 68–1, 1968–1 C.B. 741.

42.19 Notice; place for filing; corporations. For purposes of filing a notice of lien on personal property of a corporation, the term "principal executive office" used in section 6323(f)(2)(B) of the Code is that office where the major executive decisions affecting the business are made and is not necessarily the same as the term "principal office" used in Rev. Rul. 73–11 concerning the place for filing corporate income tax returns. (Sec. 6323, '54 Code.)

Rev. Rul. 74–571, 1974–2 C.B. 398.

42.20 Notice; place for filing; Iowa. Notices of Federal tax liens on personal property in Iowa including vehicles for which certificates of title are necessary are to be filed with the U.S. District Court for the judicial district in which the property is situated. Notices will continue to be filed with the Secretary of State if the taxpayer is a corporation or partnership, and in all other cases, in the office of the recorder of the county where the taxpayer resides at the time of filing in accordance with Iowa Code as it existed prior to an amendment effective July 1, 1971. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Proc. 71–37, 1971–2 C.B. 573.

42.21 Notice; place for filing; Massachusetts. Due to a change in Massachusetts State law, the Service will continue to follow Rev. Rul. 77–61 and file notices of federal tax liens with respect to personal property in Massachusetts only in the office of the United States district court for the judicial district in which the taxpayer resides. Rev. Rul. 84–148 revoked. §301.6323(f)–1. (Sec. 6323, '54 Code.)

Rev. Rul. 85–89, 1985–26 I.R.B. 18.

42.22 Notice; place for filing; New Hampshire. Whenever it becomes necessary in New Hampshire to file a notice of Federal tax lien, or a certificate of release or discharge of such a lien, District Directors should file the same in the offices designated in the Revised Laws of New Hampshire. §301.6323–1. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Rev. Rul. 55–134, 1955–1 C.B. 196.

42.23 Notice; place for filing; New York State. Whenever it becomes necessary to file in the State of New York a notice of Federal tax lien, or a certificate of release or discharge of such lien, District Directors should file the same in the office of the county or other local official designated by State statute. (Sec. 3672, '39 Code; Sec. 6332, '54 Code.)

Rev. Rul. 54–93, 1954–1 C.B. 280.

42.24 Option rights. Federal tax liens attach to property only to the extent of the delinquent taxpayer's interest therein. Where a taxpayer has only an option to purchase real property at the time the Federal tax lien arises, the lien attaches to the option and not to the real estate. When the taxpayer's rights under an option terminate after the Federal tax lien has arisen, the rights of the U.S. in the option also terminate, since there is no longer any property in the option to which a lien can attach. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Rev. Rul. 54–154, 1954–1 C.B. 277.

42.25 Priority. In determining whether a Federal tax lien attaches to a fund composed of amounts owing to a general contractor from a property owner for construction work, where amounts are due subcontractors for materials and labor, the lower court must first determine the nature of the general contractor's rights to the fund. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Aquilino, 363 U.S. 509, Ct. D. 1856, 1960–2 C.B. 477.

42.26 Priority; advances under open-end mortgage. An advance of money by a mortgage under an "open-end mortgage" providing for subsequent loans to a mortgagor secured by the original mortgage does not have priority over an intervening recorded tax lien. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Rul. 56–41, 1956–1 C.B. 562.

42.27 Priority; attachment lien; Ohio. Under the given circumstances a Federal tax lien has priority over an attachment lien designated "an execution in advance" under Ohio law. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Acri, 348 U.S. 211, Ct. D. 1778, 1955–1 C.B. 547.

42.28 Priority; distress for rent; South Carolina. Under the given circumstances a Federal tax lien has priority over a landlord's distress for rent under South Carolina law. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Scovil, 348 U.S. 218, Ct. D. 1779, 1955–1 C.B. 548.

42.29 Priority; Federal or municipal; bankruptcy cases. The principles of law set out in *City of New Britain* decision will be followed when a tax claim is asserted against the Service's proceeds realized from the bankruptcy sale of personal property in instances where a circular priority situation develops because applicable provisions of section 67c of the Bankruptcy Act require the postponement in payment of the Federal tax lien or other statutory lien to the payment of costs of administration and wage claims. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Rul. 61–101, 1961–1 C.B. 715.

42.30 Priority; filed in Federal district court. A notice of lien filed in a Federal district court has priority over a third-party purchaser where state law requires the U.S. to describe the real property involved to be acceptable for filing with the register of deeds. §301.6323–1. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Donnelly, 397 U.S. 286, Ct. D. 1936, 1970–1 C.B. 285.

42.31 Priority; garnishment lien; Texas. Under the given circumstances a Federal tax lien has priority over a garnishment lien and the garnishee insurance company's right under Texas Rules of Civil Procedure to attorney's fees. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Liverpool and London and Globe Insurance Co., and Sunnyland Wholesale Furniture Co., 348 U.S. 215, Ct. D. 1780, 1955–1 C.B. 549.

42.32 Priority; judgment creditor; New York. In the State of New York a judgment creditor acquires a lien against the personal property of a judgment debtor as of the time of the delivery of a writ of execution to the proper officer. Consequently, a notice of Federal tax lien filed subsequent to the delivery of the writ of execution is invalid as against the judgment creditor with respect to personal property levied upon and sold under the execution, even though the sale was made after the filing of such notice. Modified to make the above provisions inapplicable to creditors' rights with respect to debtors' personal property under the New York Civil Practice Law and Rules. §301.6323–1. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Rev. Rul. 225, 1953–2 C.B. 467; Rev. Rul. 66–383, 1966–2 C.B. 502.

42.33 Priority; judgment creditor; New York. To qualify as a judgment creditor, a person must have obtained (in addition to the judgment) a lien against the judgment debtor's property under applicable State law prior to the filing of the notice of the Federal tax lien. In the State of New York a judgment creditor acquires a lien against funds of the judgment debtor in the hands of a third party upon service of a subpoena and restraining order in supplementary proceedings under the New York Civil Practice Act. Modified to make the above provisions inapplicable to creditors' rights with respect to debtors' personal property under the New York Civil Practice Law and Rules. §301.6323–1. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Rev. Rul. 54–125, 1954–1 C.B. 282; Rev. Rul. 66–383, 1966–2 C.B. 502.

42.34 Priority; mortgagee's lien for attorney's fee. Where state law provided for the allowance, in a foreclosure action, of an attorney's fee fixed as a certain percentage of the amount adjudged to be paid to the mortgagee and taxed as costs in the action, the mortgagee's claim for the statutory attorney's fee arising out of foreclosure proceedings was inchoate until there was an adjudication of the sum of money due on the mortgage. Therefore, the claim was subordinate to a Federal tax lien, notice of which had been recorded prior to default by the mortgagor. §§301.6321–1, 301.6323–1. (Secs. 6321, 6323; '54 Code.)

Equitable Life Assurance Society of the United States, 384 U.S. 323, Ct. D. 1913, 1966–2 C.B. 499.

42.35 Priority; mortgagee's lien for attorney's fee; choateness test. A claim for attorney's fees arising from foreclosure proceedings is inchoate and unperfected until fixed in amount by the foreclosure decree. Therefore, the claim is subordinate to intervening Federal tax liens, notice of which was filed before the lien for attorney's fees matured. §§301.6321–1, 301.6323–1. (Secs. 6321, 6323; '54 Code.)

Pioneer American Insurance Co., 374 U.S. 84, Ct. D. 1883, 1963–2 C.B. 616.

42.36 Priority; municipal liens; insolvent taxpayers. A town tax lien is a general lien in the absence of a judgment rendered by a court of record. Where the lien of the town and that of the Federal Government are both general and the taxpayer is insolvent the Federal Government's lien has priority under section 3466 of the Revised Statutes. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Gilbert Associates, 345 U.S. 361, Ct. D. 1757, 1953–1 C.B. 474.

42.37 Priority; municipal liens; solvent taxpayers. The "first in time is the first in right" rule applies in determining priority of statutory Federal and municipal liens which attach to the same real estate, where no question of insolvency is involved. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

City of New Britain, 347 U.S. 81, Ct. D. 1764, 1954–1 C.B. 277.

42.38 Priority; North Carolina. Construction of North Carolina law as giving a general contractor a property right in amounts owed by the owner of real estate for whom construction work has been performed only to the extent that the amounts exceed sum owed to subcontractors was not clearly erroneous or unreasonable. Accordingly, under North Carolina law, the Federal tax lien did not attach to that part of the fund sufficient to pay the subcontractors. (Sec. 6321, '54 Code.)

Durham Lumber Co., 363 U.S. 522, Ct. D. 1855, 1960–2 C.B. 391.

42.39 Priority; notice filed in U.S. District Court. A notice of tax lien filed in the U.S. District Court for the judicial district in which the taxpayer's real property was situated was superior to the rights of a mortgagee where (1) the notice of lien was filed before the mortgage was executed, and (2) a state law imposed a condition on filing by requiring tax lien notices to contain a description of the land upon which the lien was claimed, thereby failing to authorize a state office for filing. §301.6323–1. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Union Central Life Insurance Co., 368 U.S. 291, Ct. D. 1869, 1962–1 C.B. 328.

42.40 Priority; purchase money security interest or mortgage. A purchase money security interest or mortgage valid under local law is protected even though it may arise after a notice of Federal tax lien has been filed. §301.6321–1. (Sec. 6321, '54 Code.)

Rev. Rul. 68–57, 1968–1 C.B. 553.

42.41 Priority; security interest; future advances. Guidelines to be applied in determining if a security interest arising from an optional advance is protected against a judgment lien creditor for purposes of section 6323(c)(1)(B) or (d)(2) of the Code, where the applicable local law is a version of Article 9 of the Uniform Commercial Code. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Rul. 72–290, 1972–1 C.B. 385.

42.42 Priority; spouse's dower or curtesy interest or statutory right. A spouse's dower or curtesy interest or statutory right has priority over a federal tax lien that arises after the taxpayer's marriage but before the taxpayer's death from a tax liability accruing before the marriage if, under the state law, the spouse's interest cannot be defeated by the other spouse or by a lien in favor of the other spouse's creditors. This holding also applies under section 3466 of the Revised Statutes, regarding priority of payments in situations where the federal government's claim against the decedent for unpaid taxes is not secured by a lien. §301.6321–1. (Sec. 6321, '54 Code.)

Rev. Rul. 79–399, 1979–2 C.B. 398.

42.43 Priority; trust mortgage. A trust mortgage is not such a mortgage as to give rise to a priority of lien to the trustees over a subsequently recorded Federal tax lien; the *Gargill* decision will not be followed. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Rul. 56–592, 1956–2 C.B. 945.

42.44 Priority; trustee in bankruptcy. A trustee in bankruptcy is not a judgment creditor within the meaning of section 3672(a) of the Code and, therefore, the lien for Federal taxes is valid even though notice thereof had not been filed prior to bankruptcy. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Green, 124 F. Supp. 481, Ct. D. 1776, 1955–1 C.B. 545.

42.45 Priority; trustee in bankruptcy. A trustee in bankruptcy is not a judgment creditor within the meaning of section 3672(a) of the Code; consequently, where prior to bankruptcy assessment lists were received by the Collector and demand duly made on the taxpayer (later bankrupt) but no notice of lien was filed, the U.S. was entitled to priority in payment as a lienholder and not merely as a tax claimant. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

England, 226 F.2d 205, Ct. D. 1790, 1956–1 C.B. 696.

42.46 Priority; trustee in bankruptcy. A trustee in bankruptcy has the rights of a statutory "judgment creditor" and, as such, prevails over an unrecorded Federal tax lien under section 6323 of the Code. §301.6323–1. (Sec. 6323, '54 Code.)

Speers, 382 U.S. 266, Ct. D. 1905, 1966–1 C.B. 282.

42.47 Priority; Vermont. Where a state lien established the identity of a solvent debtor, the property subject to the lien, and the amount of the lien, it was sufficiently choate to prevail over a later-filed Federal lien where the state and Federal liens are based on identical statutes. §301.6321–1. (Secs. 6321, 6322; '54 Code.)

Vermont, 377 U.S. 351, Ct. D. 1890, 1964–2 C.B. 493.

42.48 Property interests; time sharing condominium. A lien may attach under section 6321 to a delinquent taxpayer's interest in a time sharing condominium unit and related common areas but not to the interests of any other owners in that condominium unit or to the unit itself. §301.6321–1. (Sec. 6321, '54 Code.)

Rev. Rul. 79–55, 1979–1 C.B. 400.

42.49 Property subject to distraint. A Federal tax lien may be asserted against intangible property such as a debt owed to a taxpayer; service of a levy against the taxpayer's debtor is effective to give the government possession of the property, even though notice of the lien had not been filed in accordance with local state law. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Eiland, 223 F.2d 118, Ct. D. 1789, 1956–1 C.B. 693.

42.50 Redemption of property; release of U.S. rights. The information required in an application for release of the United States right of redemption with respect to real property sold in a nonjudicial sale is set forth. §400.5–1. (Sec. 7425, '54 Code.)

Rev. Proc. 68–10, 1968–1 C.B. 758.

42.51 Seizure from third party. An automobile or other personal property disposed of by a delinquent taxpayer after notice of a Federal tax lien has been properly filed may be seized from a third party and sold under a warrant for distraint, provided such property can be identified as property covered by the lien. (Sec. 3692, '39 Code; Secs. 6331, 6334, '54 Code.)

Rev. Rul. 54–257, 1954–2 C.B. 429.

Limitation period

44.1 Armed Forces; combat zone. The last date for the timely performance of the acts enumerated in section 7508, relating to an individual serving in a combat zone, is determined by adding to the time to be disregarded under section 7508 the time which remained for the performance of such acts at the time the individual entered the combat zone. (Secs. 6072, 7508; '54 Code.)

Rev. Rul. 76–425, 1976–2 C.B. 447.

44.2 Assessments; advance payment of agreed deficiency plus interest. The Service is barred from assessing the payment of an agreed deficiency plus interest after the running of the period of limitation of assessment. However, the advance payment of the deficiency plus interest does not constitute an overpayment of tax so as to entitle the taxpayer to a refund. Rev. Rul. 74–580 distinguished. §§301.6401–1, 301.6402–1, 301.6501(a)–1. (Secs. 6401, 6402, 6501; '54 Code.)

Rev. Rul. 85–67, 1985–1 C.B. 364.

44.3 Assessments; omitted income. Omitted income in an Estate income tax return was adequately reflected by the related partnership return in a manner to apprise the Commissioner of its nature and amount and, therefore, the six-year limitation period was inapplicable. (Sec. 6501, '54 Code.)

George Edward Quick Trust, 54 T.C. 1336, Acq., 1970–2 C.B. xxi.

44.4 Assessments; transferee of decedent or dissolved corporation. The period of limitations for assessment against a transferee of a deceased individual or a dissolved corporation expires one year after expiration of the normal period of limitations for assessment against the transferor, even though a request for prompt assessment has been made under section 6501(d) of the Code on behalf of the transferor. §301.6901–1. (Sec. 6901, '54 Code.)

Rev. Rul. 64–305, 1964–2 C.B. 503.

44.5 Claims; attorney's fees. An overpayment of estate tax attributable to otherwise deductible attorney's fees paid after a Tax Court decision becomes final and more than three years after the filing of the estate tax return will not be refunded except to the extent that allowance of the attorney's fees as an additional deduction is reflected in the final decision of the Tax Court. Rev. Rul. 61–59 clarified. §§20.2053–8, 301.6215–1, 301.6501(a)–1, 301.6503(a)–1, 301.7805–1. (Secs. 2053, 6215, 6501, 6503, 7805; '54 Code.)

Rev. Rul. 78–323, 1978–2 C.B. 240.

44.6 Claims; inheritance tax credit. Correspondence received within four years after filing the Federal estate tax return, clearly indicating an intent to claim credit for state inheritance taxes, may be considered as a claim filed within the statutory period. In such case the supporting evidence need not be submitted within the statutory period so long as the taxes were actually paid within four years. §81.9. (Sec. 813(b), '39 Code; Sec. 2011, '54 Code.)

Rev. Rul. 55–380, 1955–1 C.B. 462.

44.7 Claims; state death tax credit. A claim for refund of federal estate tax based on an additional state death tax credit claimed under section 2011 may be made during the 2-year period for filing a claim for refund under section 6511(a) even though the 4-year period of limitation under section 2011(c) has expired. Rev. Rul. 56–568 superseded. §§20.2011–1, 301.6511(a)–1. (Secs. 2011, 6511; '54 Code.)

Rev. Rul. 81–263, 1981–2 C.B. 169.

44.8 Claims; Tax Court decision; appeal dismissed. A decision of the Tax Court which has been appealed to the U.S. Court of Appeals does not become final until the expiration of the time for filing a petiton for certiorari, even though the Court of Appeals dismisses the petition to review at the request of both parties. A claim for refund is timely when filed prior to the expiration of the period provided in section 6511(c)(1) of the Code, as extended by the period allowed for filing a petition for certiorari and the unexpired portion of the suspended period under the notice of deficiency. §§39.322–8, 301.6511(c)–1, 301.7481–1. (Secs. 322, 1140, '39 Code; Secs. 6511, 7481, '54 Code.)

Rev. Rul. 65–305, 1965–2 C.B. 442.

44.9 Claims; timeliness. Where the last day of the limitation period for filing a claim for credit or refund falls on a Saturday, Sunday, or legal holiday and the claim is filed on the next succeeding day which is not a Saturday, Sunday, or legal holiday, the amount of refund allowable is not limited even though no tax was paid within the three-year period immediately preceding the date of actual filing of the claim. Rev. Rul. 57–354, which deals with the timeliness of claims for credit or refund under the 1939 and 1954 Codes in cases where no return was filed or where the return filed was delinquent, is superseded with respect to its application of the 1954 Code. §§39.322–7, 301.6511(a)–1, 301.6511(b)–1, 301.7503–1. (Sec. 322, '39 Code; Secs. 6511, 7503, '54 Code.)

Rev. Rul. 57–354, 1957–2 C.B. 913; Rev. Rul. 66–118, 1966–1 C.B. 290.

44.10 Claims; timeliness; assessment and payment after period expires. A claim for refund of a tax assessed and paid after the expiration of the period of limitations on assessment must be filed within two years of the date of payment. The decision in *Thompson* will no longer be followed. §§301.6401–1, 301.6402–2, 301.6501(a)–1, 301.6511(a)–1. (Secs. 6401, 6402, 6501, 6511; '54 Code.)

Rev. Rul. 74–580, 1974–2 C.B. 400.

44.11 Criminal prosecution; complaint showing probable cause. A timely filed complaint charging the taxpayer with willfully filing a false return is sufficient to bring about the nine-month extension of the period of limitations where it shows probable cause. (Sec. 6531, '54 Code.)

Jaben, 381 U.S. 214, Ct. D. 1902, 1965–2 C.B. 446.

44.12 Criminal prosecution; conspiracy to evade tax. A conspiracy to evade taxes by concealing holdout income from pinball machines continued beyond the filing of the last return where later overt acts, i.e., furnishing government agents with false records and statements, were committed within six years of the return of the indictment in order to conceal the hold out income until action thereon was barred, so that prosecution was timely under the six-year limitation period. §39.145–1. (Secs. 145, 3748, '39 Code; Secs. 6531, 7201, '54 Code.)

Forman, 361 U.S. 416, Ct. D. 1843, 1960–1 C.B. 695.

44.13 Criminal prosecution; fraudulent return. The six-year statute of limitations on a criminal prosecution for filing fraudulent returns begins to run from the date on which the return is actually filed where an extension of time has been granted by the Commissioner, and not from the original due date of the return. (Secs. 6513, 6531; '54 Code.)

Habig, 390 U.S. 222, Ct. D. 1921, 1968–2 C.B. 589.

44.14 Extension; authority to sign Form 907. A signed Form 2848, Power of Attorney, is insufficient to authorize a taxpayer's representative to sign Form 907, Agreement to Extend Period of Limitations, in the absence of that specific authorization. §301.6532–1. (Sec. 6532, '54 Code.)

Rev. Rul. 76–60, 1976–1 C.B. 387.

44.15 Extension; Form 872–A, assessments. Conditions are set forth with respect to the acceptance by Appeals officials and District Directors of Internal Revenue of Form 872–A, Special Consent to Extend the Time to Assess Tax. Form 872–A, accepted in place of Form 872, relieves taxpayers and the Service from the inconvenience of obtaining renewal consents. Rev. Proc. 71–11 superseded. §301.6501(c)–1. (Sec. 601.105, S.P.R.; Sec. 6501, '54 Code.)

Rev. Proc. 79–22, 1979–1 C.B. 563.

44.16 Extension; restriction of consents. Procedures are set forth under which the scope of a consent, Form 872, extending the limitation period for assessment may be restricted to one or more issues. Modified by Rev. Proc. 77–6 to provide that the terms "automatic effect" and "related or automatic items" as used are changed to "a direct or indirect effect" and "consequential changes," respectively. Rev. Proc. 68–3 superseded. §301.6501(c)–1. (Sec. 601.105, S.P.R.; Sec. 6501, '54 Code.)

Rev. Proc. 68–31, 1968–2 C.B. 917; Rev. Proc. 77–6, 1977–1 C.B. 539.

44.17 Interest on refund. The filing of a claim on Form 843 for additional interest on a refund of tax overpayment does not stop the running of the six-year statute of limitations. This claim is no more than a request for additional interest. The only way a taxpayer can fully protect his right to interest is by filing a civil suit against the U.S. prior to the termination of the six-year statutory period. (Sec. 3771, '39 Code; Sec. 6611, '54 Code.)

Rev. Rul. 57–242, 1957–1 C.B. 452.

44.18 Interest; installment payment of tax; equitable recoupment. When no waivers were filed under section 642(g), all interest expenses actually incurred on the deferred payment of the federal estate tax are deductible under section 2053(a)(2), even though the interest expenses were claimed on the estate's income tax returns and the period of limitations on assessment of income tax has expired for those years. Under the doctrine of equitable recoupment, the amount of the estate tax overpayment is offset by the deficiencies and the interest on them resulting from the deduction of interest on income tax returns for the years for which the period of limitations on assessment of income tax has expired. §20.2053–3. (Secs. 642, 2053, 6166, 6166A, 6501; '54 Code.)

Rev. Rul. 81–287, 1981–2 C.B. 183.

44.19 Refunds and credits; estate tax on prior transfers; installment payments. If the estate tax of a transferor decedent is being paid in section 6166 installments, only the amount of installments actually paid is to be used in computing the section 2013 credit for the estate of the transferee decedent. §§20.2013–2, 20.6166–1, 301.6511(a)–1. (Secs. 2013, 6166, 6511; '54 Code.)

Rev. Rul. 83–15, 1983–1 C.B. 224.

44.20 Saturday last day. Claims will be considered to have been received on Saturday, March 15, 1952, if they were in fact received on March 17, 1952. §29.322–3. (Sec. 322, '39 Code; Sec. 6511, '54 Code.)

Rev. Rul. 110, 1953–1 C.B. 306.

44.21 Suspension; waiver of restrictions. A waiver of the restrictions on assessment and collection of a deficiency terminates the 90-day suspension of the period of limitations on assessment and collection and starts the 60-day suspension period. A notation added to the waiver form by the taxpayer which reserves the right to claim a refund is not a condition but an expression of the rights of the taxpayer at that time which does not invalidate the waiver. §§301.6213–1, 301.6503(a)–1. (Secs. 6213, 6503; '54 Code.)

Rev. Rul. 66–17, 1966–1 C.B. 272.

44.22 Waiver in refund proceedings. Where a claim for refund is disallowed by means other than a registered notice of disallowance mailed to the taxpayer, unless the taxpayer has filed a written waiver of the requirement that he be mailed such registered notice of disallowance, an agreement to suspend the running of the statute of limitations for purposes of a suit based on the claim is not necessary. §301.6532–1. (Sec. 6532, '54 Code.)

Rev. Rul. 56–381, 1956–2 C.B. 953.

44.23 Waiver of registered notice of disallowance. A taxpayer may execute a waiver, Form 2297, Waiver of Registered Mail Notification of Claim Disallowance, of the requirement that a registered notice of disallowance of a claim be issued where an agreement is secured at the conclusion of an investigation or conference. A taxpayer may request the opportunity to execute the waiver at any time prior to issuance of the registered notice. §301.6532–1. (Sec. 601.602, S.P.R.; Sec. 6532, '54 Code.)

Rev. Proc. 57–12, 1957–1 C.B. 740.

Offers in compromise

46.1 Acceptance; inspection. The jurisdictional changes pertaining to the consideration and disposition of offers in compromise and general guidelines relating to the acceptability of an offer in compromise are set forth. Rev. Proc. 64–44 and 66–53 superseded. §301.7122–1. (Sec. 601.203, S.P.R.; Sec. 7122, '54 Code.)

Rev. Proc. 80–6, 1980–1 C.B. 586.

46.2 Forms. Form 656, Offer in Compromise, will be used in submitting all offers in compromise. It supersedes prior Form 656 used for submitting cash offers and Form 656–C used for submitting deferred payment offers. (Sec. 7122, '54 Code.)

Rev. Proc. 57–41, 1957–2 C.B. 1119.

46.3 Transferee liability. The acceptance of an offer in compromise from one transferee does not compromise the liabilities of the transferor or the other transferees. The amount paid is credited against the transferor's tax. The balance of the transferor's liability continues outstanding and may be collected from the other transferees or the transferor. The amount accepted is not credited against the liabilities of the other transferees; however, their liabilities may be affected. G.C.M. 9252 superseded. §§301.6901–1, 301.7122–1. (Secs. 6901, 7122; '54 Code.)

Rev. Rul. 72–436, 1972–2 C.B. 643.

46.4 Written protest. Effective March 1, 1968, the Appellate Division will consider certain unagreed cases and offers in compromise without requiring the taxpayer to file a written protest. (Sec. 601.106, S.P.R.)

Rev. Proc. 68–4, 1968–1 C.B. 746.

Officers and employees of the Service

48.1 Testimony in private litigation. Guidelines for persons requesting the production of records or the testimony of officers or employees of the Revenue Service in litigation in which the Federal Government is not a party. Rev. Proc.

66–43 superseded.§§301.6103(a)–2, 301.9000–1. (Secs. 6103, 7213; '54 Code.)
Rev. Proc. 73–6, 1973–1 C.B. 752.

Overassessments
(See: Refunds and credits)

Overpayments

50.1 Adjusted interest rate. The interest rate to be charged on underpayments or paid on overpayments after January 1976 will be determined not later than October 15, 1975, based on the adjusted prime rate charged by commercial banks during September 1975. (Sec. 6621, '54 Code.)
Rev. Rul. 75–165, 1975–1 C.B. 375.

50.2 Adjusted interest rate. The adjusted rate of interest on underpayments and overpayments has been established under section 6221(b). §301.6621–1. (Sec. 6621, '54 Code.)
Rev. Rul. 75–487, 1975–2 C.B. 488.
Rev. Rul. 77–411, 1977–2 C.B. 480.
Rev. Rul. 79–366, 1979–2 C.B. 402.
Rev. Rul. 81–260, 1981–2 C.B. 244.
Rev. Rul. 82–182, 1982–2 C.B. 399.
Rev. Rul. 83–76, 1983–1 C.B. 354.
Rev. Rul. 83–171, 1983–2 C.B. 252.
Rev. Rul. 84–66, 1984–1 C.B. 260.
Rev. Rul. 84–159, 1984–44 I.R.B. 12.
Rev. Rul. 85–47, 1985–1 C.B. 367.
Rev. Rul. 85–169, 1985–44 I.R.B. 15.
Rev. Rul. 86–57, 1986–16 I.R.B. 4.
Rev. Rul. 86–146, 1986–50 I.R.B. 5.

50.3 Barred; offset against assessments. Under the doctrine of equitable recoupment, a barred overpayment of Federal estate tax may be applied against outstanding assessments of income tax due by a decedent for years preceeding his death if a claim therefor was made within the period provided by the statute of limitations applicable to such deficiency. However, the doctrine of equitable recoupment does not apply where the taxpayer litigates the deficiency by filing a petition in the Tax Court. Rev. Rul. 55–226 revoked.§301.6511(b)–1. (Sec. 6511, '54 Code.)
Rev. Rul. 71–56, 1971–1 C.B. 404.

50.4 Interest; changes under 1954 Code. The provisions of the 1954 Code relating to interest on underpayment, nonpayment, overpayment, or extension of time for payment, of tax are explained. (Secs. 6601, 6611; '54 Code.)
Rev. Rul. 54–426, 1954–2 C.B. 39.

50.5 Interest; credit against deficiency assessment. Interest on an overpayment, to the extent credited against a deficiency, will be computed under section 6611. On that portion of a deficiency satisfied by crediting an overpayment, interest will be computed under section 6601. A notice and demand showing only a net amount or no tax due over the amount offset as a credit will not start the interest period on that part of the additional tax satisfied by credit. Modified to provide that additional interest will be collected or offset only if an unqualified notice and demand has been issued for the amount satisfied by credit of the overpayment.§301.6407–1. (Secs. 6407, 6601; '54 Code.)
Rev. Rul. 55–485, 1955–2 C.B. 499; Rev. Rul. 56–573, 1956–2 C.B. 955.

50.6 Interest; credit against deficiency assessment. Taxpayers who have been charged interest on amounts satisfied by the crediting of overpayments of tax may obtain appropriate adjustments or refunds upon request. These will be allowed retroactively but a request for adjustment or refund will be given effect for all open years and may result in a financial detriment. (Sec. 6611, '54 Code.)
Rev. Rul. 56–574, 1956–2 C.B. 959.

50.7 Interest; delayed delivery. No interest is allowable, beyond the date prescribed in section 6611(b)(2), for the period a refund check is undelivered without fault of the Government. However, interest is allowable for the period of delayed delivery due to a check having been erroneously drawn or the overpayment having been excessively offset against another agency's claims. Rev. Ruls. 55–477, 56–445, and 57–82 superseded. §301.6611–1. (Sec. 6611, '54 Code.)
Rev. Rul. 76–74, 1976–1 C.B. 388.

50.8 Interest; excess payment with extension of time to file. The excess of the amount paid with a request for an extension of time to file over the final tax liability shown on an estate or gift tax return is an overpayment. Interest is due and payable from the last date prescribed for filing the return, determined without regard to any extension, to a date 30 days prior to the date of the refund check. §§20.6081–1, 20.6151–1, 25.6081–1, 25.6151–1, 301.6401–1, 301.6611–1. (Secs. 6081, 6151, 6401, 6611; '54 Code.)
Rev. Rul. 81–189, 1981–2 C.B. 240.

50.9 Interest; limitation period on refund. The filing of a claim on Form 843 for additional interest on a refund of tax overpayment does not stop the running of the six-year statute of limitations. This claim is no more than a request for additional interest. The only way a taxpayer can fully protect his right to interest is by filing a civil suit against the U. S. prior to the termination of the six-year statutory period. (Sec. 3771, '39 Code; Sec. 6611, '54 Code.)
Rev. Rul. 57–242, 1957–1 C.B. 452.

50.10 Interest; tax paid with Treasury bonds. When there is an overpayment of estate tax originally paid by the redemption of flower bonds, the Government may reinstate the flower bonds, rather than make a cash refund. In such a case, the Government will pay interest on the overpayments at the rate established by section 6621 and will calculate the interest on the fair market value of the bonds as of the date they were redeemed. §§20.6151–1, 301.6312–1, 301.6402–1, 301.6611–1, 301.6621–1. (Secs. 6151, 6312, 6402, 6611, 6621; '54 Code.)
Rev. Rul. 84–38, 1984–1 C.B. 250

50.11 Interest on interest. When interest was allowed on an overpayment of tax and was later adjusted for the reason that it was determined to be insufficient, a taxpayer will not be entitled to interest for the delay in the payment of the amount determined to be additional interest on the overpayment. (Sec. 6611, '54 Code.)
Rev. Rul. 57–271, 1957–1 C.B. 453.

50.12 Interest rate. Examples are provided for the computation of the 9 percent interest rate on underpayments and overpayments of tax, effective on July 1, 1975, under the provisions of section 6621 of the Code as added by Pub. L. 93–625. §§301.6332–1, 301.6601–1, 301.6602–1, 301.6611–1, 301.7426–1. (Secs. 6332, 6601, 6602, 6611, 6621, 7426; '54 Code.)
Rev. Rul. 75–58, 1975–1 C.B. 374.

50.13 Interest rate; daily compounding rules. Uniform rates and procedures are set forth for computation of interest under the compounding rules established under section 6622. §301.6621-1. (Sec. 601.104, S.P.R.; Secs. 6621, 6622, '54 Code.)
Rev. Proc. 83–7, 1983–1 C.B. 583.

50.14 Refunds based on state inheritance tax credit. Where refunds of federal estate tax are made in cases involving credit for state inheritance taxes, a refund based entirely on credit for state inheritance taxes will be made without interest, a refund based partially on credit for state inheritance taxes and partially on other adjustments will bear interest only on that portion of the refund attributable to other adjustments other than the credit for state inheritance taxes, and a refund based entirely on adjustments other than credit for state inheritance taxes will bear interest on the entire amount of the refund. Rev. Rul. 55–69 superseded.§§81.9, 20.2011–1. (Sec. 813(b), '39 Code; Sec. 2011, '54 Code.)
Rev. Rul. 61–58, 1961–1 C.B. 414.

50.15 Refunds based on state inheritance tax credit. A decedent's estate is not entitled to a refund of the interest paid on a deficiency that is later reduced by the allowance of a state death tax credit under section 2011(a). §§20.2011–1, 301.6601–1, 301.6611–1. (Secs. 2011, 6601, 6611; '54 Code.)
Rev. Rul. 79–219, 1979–2 C.B. 401.

50.16 Restricted interest. Guides and instructions for the computation of restricted interest are set forth. Modified to provide that rules regarding restriction of interest are not applicable where one taxpayer's overpayment is credited, with his consent, to another taxpayer's deficiency. Rev. Proc. 60–17 modified by Rev. Procs. 83–58 and 84–66. §§301.6601–1, 301.6611–1. (Sec. 601.104, S.P.R.; Sec. 3771, '39 Code; Secs. 6601, 6611, '54 Code.)
Rev. Proc. 60–17, 1960–2 C.B. 942; Rev. Proc. 65–20, 1965–2 C.B. 1003.

50.17 Restricted interest. If an overpayment is applied as credit to unpaid interest, penalty, or addition to tax for the same year and type of tax, interest is allowed from the date of overpayment to the date of assessment of the amount to which the credit is applied. Rev. Proc. 60–17 modified. §301.6611–1. (Sec. 601.104, S.P.R.; Sec. 6611, '54 Code.)
Rev. Proc. 83–58, 1983–2 C.B. 575.

Payment of tax

52.1 Estate tax installment payments; credit for tax on prior transfers. If the estate tax of a transferor decedent is being paid in section 6166 installments, only the amount of installments actually paid is to be used in computing the section 2013 credit for the estate of the transferee decedent. §§20.2013–2, 20.6166–1, 301.6511(a)–1. (Secs. 2013, 6166, 6511; '54 Code.)
Rev. Rul. 83–15, 1983–1 C.B. 224.

52.2 Extension of time; failure to file timely; addition to tax. An estate or donor of a gift is subject to the addition to the tax for failure to file timely when the tax due on the return is paid with the filing for an extension of time but the return is not filed until after the period covered by the extension, and reasonable cause is not established. §§20.6075–1, 25.6075–1, 20.6081–1, 25.6081–1, 20.6151–1, 25.6151–1, 20.6161–1, 25.6161–1, 301.6651–1. (Secs. 6075, 6081, 6151, 6161, 6651; '54 Code.)
Rev. Rul. 81–237, 1981–2 C.B. 245.

52.3 Farm; special use value; premature disposal; interest. When an election to specially value property has been made under section 2032A and the property is later disposed of prematurely, interest on the additional estate tax due will be assessed for the period commencing 6 months after the date of disposition. §§20.2032A–8, 20.6151–1, 301.6601–1. (Secs. 2032A, 6151, 6601; '54 Code.)
Rev. Rul. 81–308, 1981–2 C.B. 176.

52.4 Installment method; annual interest payments; closely held business. Failure to make annual interest payments required by section 6166(f)(1) will not trigger the accelerated payment of unpaid estate tax for the estates of decedents dying on or before December 31, 1981. However, any missed interest payments might be subject to normal collection proceedings including the levy and distraint provisions of section 6331. §20.6166-1. (Sec. 6166, '54 Code.)

Rev. Rul. 82-120, 1982-1 C.B. 203.

52.5 Installment method; change in business form. A change in the operation of a business from a corporate form to an unincorporated form, which does not materially alter the business or the interest of the estate in the business, does not bring about the application of section 6166(h)(1)(a) of the Code so as to cause a termination of the installment privilege otherwise available to the estate.§20.6166-3. (Sec. 6166, '54 Code.)

Rev. Rul. 66-62, 1966-1 C.B. 272.

52.6 Installment method; closely held business; proprietorship and corporation. A decedent's ownership of an electing small business corporation engaged in home construction on the decedent's land, a sole proprietorship that developed the land and sold the homes and a business office and warehouse shared with the corporation, constitute an interest in a closely held business for purposes of the election under section 6166(c) to pay the estate tax in installments. However, the decedent's ownership and rental of eight houses was management of investment assets and does not qualify. §20.6166-2. (Sec. 6166, '54 Code.)

Rev. Rul. 75-367, 1975-2 C.B. 472.

52.7 Installment method; closely held business; residuary charitable bequest. When expenses are payable out of the residuary estate, the value of the residuary charitable bequest must be reduced by an estimate of the maximum amount of interest that will be payable on federal estate taxes deferred under section 6166A to determine the amount of the charitable deduction allowable under section 2055. The charitable deduction must be reduced by the interest whether the deduction for this administration expense will be taken on the estate's income tax return or the federal estate tax return. §§20.2055-1, 20.6166-1, 20.6166A-1. (Secs. 2055, 6166, 6166A; '54 Code.)

Rev. Rul. 82-6, 1982-1 C.B. 137.

52.8 Installment method; closely-held business; stock redemption. An explanation is provided of the application of sections 303 and 6166 when shares of stock are redeemed and an election to pay the estate tax in installments is made. Rev. Rul. 72-188 modified. §20.6166-1. (Secs. 303, 6166; '54.)

Rev. Rul. 86-54, 1986-15 I.R.B. 44.

52.9 Installment method; closely held business; stock redemption. Application of sections 303 and 6166 of the Code where shares of stock in an estate are redeemed in each of ten consecutive years and an election is made to pay the estate tax attributable to such stock in ten equal installments.§20.6166-3. (Secs. 303, 6166; '54 Code.)

Rev. Rul. 72-188, 1972-1 C.B. 383.

52.10 Installment method; closely held business; tenant farms. Farms comprising 75 percent of the decedent's gross estate, operated by tenant farmers under agreements that the decedent would pay 40 percent of the expenses and receive 40 percent of the crops, and in which the decedent had actively participated in the important management decisions, constitute an interest in a closely held business for purposes of the election under section 6166(c) to pay the estate tax in installments. §20.6166-2. (Sec. 6166, '54 Code.)

Rev. Rul. 75-366, 1975-2 C.B. 472.

52.11 Installment method; closely held business; valuation. In computing the limitation on the amount of estate tax that may be paid in installments under section 6166A, the value of a decedent's interest as a proprietor in a trade or business carried on as a proprietorship is the net amount a willing purchaser would pay for the interest to a willing seller. §§20.2031-1, 20.2031-3, 20.6166-1. (Secs. 2031, 6166, 6166A; '54 Code.)

Rev. Rul. 80-202, 1980-2 C.B. 363.

52.12 Installment method; closely held business; withdrawals. A corporation's payment of an ordinary cash dividend consisting of the entire earnings and profits accumulated before and after the death of the corporation's sole shareholder is a withdrawal of money or other property within the meaning of section 6166(h)(1)(A) to the extent attributable to earnings and profits accumulated before decedent's death. §§20.2032-1, 20.6166-3. (Secs. 2032, 6166; '54 Code.)

Rev. Rul. 75-401, 1975-2 C.B. 473.

52.13 Installment method; election by executor. The community interest of a surviving spouse in closely held businesses cannot be combined with the deceased spouse's interest in order to ascertain whether the percentage requirements are met so as to entitle the executor to elect to pay part or all of the estate tax in two or more installments. §20.6166-2. (Sec. 6166, '54 Code.)

Rev. Rul. 61-91, 1961-1 C.B. 714.

52.14 Installment method; extension; deficiency or overpayment; closely held business. Examples illustrate the amount due when installment payments are recomputed because of determinations of deficiencies, overpayments, and changes in the ratio of the value of an interest in a closely held business to the value of the estate. §§20.6166-1, 20.6166A-1, 301.6402-1, 301.6403-1. (Secs. 6166, 6166A, 6402, 6403; '54 Code.)

Rev. Rul. 81-294, 1981-2 C.B. 237.

52.15 Installment method; extension of time to pay first installment. An executor's request for an extension of time to pay the first installment of the qualified tax and all of the nonqualified tax, filed with the estate tax return and an election under section 6166 of the Code to pay the qualified tax in ten installments at the expiration of a six-month extension of time to file, may be granted under the exception in section 20.6161-1(b) of the regulations. Amplified by Rev. Rul. 76-51.§§20.6151-1, 20.6161-1, 20.6166-1. (Secs. 6151, 6161, 6166; '54 Code.)

Rev. Rul. 74-499, 1974-2 C.B. 397.

52.16 Installment method; extension of time to pay first installment. An estate that has been granted an extension of time for filing, and that pays the first installment of tax at the same time it files the return and an election to pay the tax in installments, will be considered to have made a timely filed request for an extension of time to pay the first installment. Rev. Rul. 74-499 amplified. §§20.6161-1, 20.6166-1. (Secs. 6161, 6166; '54 Code.)

Rev. Rul. 76-51, 1976-1 C.B. 382.

52.17 Installment method; investment assets. A decedent's commercial and farm rental properties and notes receivable aggregating more than 35 percent of his estate and all managed and maintained by the decedent's business office do not constitute under section 6166(c) an interest in a closely held business for purposes of the election to pay the estate tax in installments. §20.6166-2. (Sec. 6166, '54 Code.)

Rev. Rul. 75-365, 1975-2 C.B. 471.

52.18 Installment method; procedures. Procedures are set forth for processing elections to pay estate tax in installments. Rev. Proc. 60-33 modified. §20.6166-1. (Secs. 601.105, 601.106, S.P.R.; Secs. 6166, 6166A, '54 Code.)

Rev. Proc. 79-55, 1979-2 C.B. 539.

52.19 Installment method; procedures; amount recomputed; deduction for interest payment on tax due. The procedure is set forth for estates to follow when installment payments due under sections 6166 and 6166A are recomputed because of a reduction in the estate tax as a result of a deduction for the interest payment on the tax due. §§20.2053-3, 20.6166-1, 20.6166A-1. (Sec. 601.105, S.P.R.; Secs. 2053, 6166, 6166A, '54 Code.)

Rev. Proc. 81-27, 1981-2 C.B. 548.

52.20 Installment method; processing election. Procedures by which the Audit Division of the District Directors' offices will process elections made by executors, administrators, etc., to pay estate taxes in installments where an interest in a closely held business is included in the gross estate of a decedent. Modified by Rev. Proc. 79-55. §24.1-1. (Sec. 601.105, S.P.R.; Sec. 6166, '54 Code.)

Rev. Proc. 60-33, 1960-2 C.B. 1012.

52.21 Installment method; royalty interests; oil and gas properties. The ownership, exploration, development, and operation of oil and gas properties constitutes a "trade or business", and the estate tax attributable thereto may be paid in installments if the estate otherwise qualifies. However, the mere ownership of royalty interests in oil properties does not constitute a "trade or business", and the deferred payment right is not applicable to the portion of decedent's estate which consists of such royalty interests.§20.6166-2. (Sec. 6166, '54 Code.)

Rev. Rul. 61-55, 1961-1 C.B. 713.

52.22 Installment method; shareholder in small business corporation. The estate of a deceased shareholder that holds stock in a small business corporation solely to facilitate the payment of Federal estate tax will continue to be an eligible shareholder within the meaning of section 1371(a) for the period during which the estate complies with the provisions of section 6166. §20.6166-1. (Secs. 641, 1371, 6166; '54 Code.)

Rev. Rul. 76-23, 1976-1 C.B. 264.

52.23 Limitation period; Armed Forces; combat zone. The last date for the timely performance of the acts enumerated in section 7508, relating to an individual serving in a combat zone, is determined by adding to the time to be disregarded under section 7508 the time which remained for the performance of such acts at the time the individual entered the combat zone. (Secs. 6072, 7508; '54 Code.)

Rev. Rul. 76-425, 1976-2 C.B. 447.

52.24 Partial; deficiency, allocation. A partial payment of assessed tax, penalty, and interest made by a cash-method taxpayer with directions as to its application will be so applied. A partial payment on assessed deficiencies or deficiencies mutually agreed to but unassessed received without instructions for its application will be applied to tax, penalty, and interest in that order, starting with the earliest period. Rev. Rul. 58-239 superseded. Modified by Rev. Rul. 79-284. §301.6601-1. (Sec. 6601, '54 Code.)

Rev. Rul. 73-305, 1973-2 C.B. 43.

52.25 Prior to deficiency notice. Decedent's estate tax return was filed in 1960 without payment, and the tax plus interest was assessed. At decedent's death a jeopardy assessment for individual income tax was outstanding against the legatee-executor. Notices of levy were served third parties for property due him as beneficiary. They transmitted cash and other assets to the District Director, to be applied to the estate tax liability, totalling more than the estate tax and interest assessed. A deficiency notice for a greater estate tax than shown on the return was issued in 1963. *Held*, the liability had been paid at the time the notice of deficiency was issued and, the Tax Court was without jurisdiction. (Sec. 6211, '54 Code.)

Mary Hart Crawford, 46 T.C. 262, Acq., 1966–2 C.B. 4.

52.26 Proration of deficiency; interest. An estate tax deficiency may be prorated to installments and the four percent interest rate is applicable to the entire deficiency, where a timely election was made under section 6166(a) of the Code and the tax was paid before assessment of the deficiency.§§20.6166–1, 301.6601–1. (Secs. 6166, 6601; '54 Code.)

Rev. Rul. 67–161, 1967–1 C.B. 342.

52.27 Real property. A transfer of real property to the Federal Government is not an acceptable method of payment of Federal taxes; they must be paid in money or its equivalent. §§20.6151–1, 301.6311–1, 301.7506–1. (Secs. 6151, 6311, 7506; '54 Code.)

Rev. Rul. 76–350, 1976–2 C.B. 396.

52.28 Treasury bonds. Procedures are provided for using certain marketable, interest-bearing U.S. Treasury bonds in payment of Federal estate tax pursuant to instructions issued by the Bureau of the Public Debt. Rev. Rul. 54–113 superseded and Rev. Rul. 156 superseded in part.§§20.6151–1, 301.6155–1, (Sec. 601.104, S.P.R.; Secs. 6151, 6155, '54 Code.)

Rev. Proc. 69–18, 1969–2 C.B. 300.

52.29 Treasury bonds. The value or fair market value of certain marketable U.S. Treasury bonds owned by a decedent at death that could be redeemed at the option of the representatives of his estate at par value for paying Federal estate taxes is the par value thereof or the mean between their highest and lowest quoted selling price at the time of his death (and accrued interest to the date of death), whichever is higher. Except in the case of redemption by substitution, the effective date described in Rev. Proc. 69–18 shall be considered the date the payment is made for purposes of section 6601(a) of the Code. Rev. Rul. 156 superseded in part.§§20.2031–1, 301.6601–1. (Secs. 2031, 6601; '54 Code.)

Rev. Rul. 69–489, 1969–2 C.B. 172.

52.30 Treasury bonds. The extent to which marketable U.S. Treasury bonds, owned by the decedent at death, may be redeemed and applied at par in payment of estate taxes will be determined at a redemption date designated by the estate representative, who may choose a date on which no interest is accrued to use the maximum amount of bonds, and the bonds will be valued under the provisions of Rev. Rul. 69–489. §20.2031–1. (Sec. 2031, '54 Code.)

Rev. Rul. 76–312, 1976–2 C.B. 262.

52.31 Treasury bonds; gift tax credit. The maximum combined par value of eligible Treasury bonds that may be redeemed for the purpose of paying the estate's Federal estate tax liability is an amount equal to the net Federal estate tax due after all applicable credits, including the credit for Federal gift taxes paid, have been subtracted from the amount of tax imposed. §§20.2001–1, 20.2012–1. (Secs. 2001, 2012; '54 Code.)

Rev. Rul. 76–367, 1976–2 C.B. 259.

52.32 Treasury Savings Notes; Series B and C. At any time after two months from issue date, Treasury Savings Notes, Series B and C, may be presented by the taxpayer, his agent or his estate for credit against any income, excess-profits, estate or gift taxes imposed. The notes will be receivable at par and accrued interest to the day when the taxes are due, and only in payment of taxes equal to or exceeding the entire value of the notes, including accrued interest. (Sec. 3657, '39 Code; Sec. 6312, '54 Code.)

D.C. 922, 1953–2 C.B. 453; D.C. 931, 1953–2 C.B. 459.

Penalties

54.1 Appeal of assessments. Procedures for appeal of assessments of certain additions to tax, additional amounts, and penalties are now found in section 601.106 of the Statement of Procedural Rules. Rev. Proc. 78–1 is obsolete. §301.7805–1. (Sec 601.104, S.P.R.; Sec. 7805, '54 Code.)

Rev. Proc. 86–10, 1986–8 I.R.B. 25.

54.2 Bankruptcy. Federal tax penalties against the estate of a bankrupt are prohibited by section 57(j) of the Bankruptcy Act, even though the penalties constitute liens perfected before bankruptcy.§301.6321–1. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Simonson, 369 U.S. 38, Ct. D. 1867, 1962–1 C.B. 302.

54.3 Bankruptcy; non-pecuniary loss penalties. Collectibility of post-petition interest and non-pecuniary loss penalties claimed against the estate of a bankrupt in proceedings under the Bankruptcy Act and in general receivership or assignment for the benefit of creditor cases. G.C.M. 21860 and Rev. Rul. 62–96 superseded. §§301.6601–1, 301.6651–1—301.6653–1, 301.6656–1—301.6658–1, 301.6672–1—301.6674–1, 301.6676–1, 301.6871(a)–2. (Secs. 6601, 6651—6653, 6656—6658, 6672—6674, 6676, 6871; '54 Code.)

Rev. Rul. 68–574, 1968–2 C.B. 595.

54.4 Bankruptcy; non-pecuniary loss penalties. Non-pecuniary loss penalties and post-petition interest will not be set off against funds due a bankrupt or insolvent taxpayer or estate by the U.S. where such penalties or interest would not be collectible as a claim against the bankrupt or insolvent estate. Rev. Rul. 56–162 revoked. §§301.6601–1—301.6871(a)–2 and intermediate sections. (Secs. 6601, 6651—6653, 6656—6658, 6672—6674, 6676, 6871; '54 Code.)

Rev. Rul. 71–31, 1971–1 C.B. 408.

54.5 Barred from assessment; offset against overpayment. Interest and penalties barred by the statute from assessment will be considered in determining the amount of an overpayment allowable on the basis of a timely filed claim for the same taxable year and the same type of tax.§301.6402–1. (Sec. 3770, '39 Code; Sec. 6402, '54 Code.)

Rev. Rul. 56–492, 1956–2 C.B. 949.

54.6 Delinquency; assignee for benefit of creditors; failure to file return. An assignee of an insolvent debtor receiving assets under a general assignment for creditors may be liable for the delinquency penalty if he fails to file a return due after the assignment, even though the facts giving rise to the requirement for the return occurred before the assignment.§408.909. (Sec. 3612(d), '39 Code; Sec. 6651, '54 Code.)

Rev. Rul. 56–158, 1956–1 C.B. 596.

54.7 Delinquency; changes under 1954 Code. The effect of the delinquency penalty provisions of section 6651 of the 1954 Code is explained and attention is directed to the fact that there are no provisions in the 1954 Code corresponding to sections 1631 and 3655(b) of the 1939 Code. (Sec. 6651, '54 Code.)

Rev. Rul. 54–427, 1954–2 C.B. 42.

54.8 Extension of time; failure to file timely. An estate or donor of a gift is subject to the addition to the tax for failure to file timely when the tax due on the return is paid with the filing for an extension of time but the return is not filed until after the period covered by the extension, and reasonable cause is not established. §§20.6075–1, 25.6075–1, 20.6081–1, 25.6081–1, 20.6151–1, 25.6151–1, 20.6161–1, 25.6161–1, 301.6651–1. (Secs. 6075, 6081, 6151, 6161, 6651; '54 Code.)

Rev. Rul. 81–237, 1981–2 C.B. 245.

54.9 Failure to collect or pay penalty; stay of collection. The bond and sureties requirements of reg. 301.7101–1 will apply to situations involving stay of collection of the 100 percent penalty assessment of section 6672. §§301.6672–1, 301.7101–1. (Secs. 6672, 7101; '54 Code.)

Rev. Rul. 79–170, 1979–1 C.B. 437.

54.10 Failure to file gift tax return. The taxpayer continued to make non-excessive support payments to his former wife after the expiration of a written separation agreement executed prior to their divorce. Under New York law, the husband had a continuing obligation to support his former wife, and an agreement purporting to limit that obligation was void. *Held*, the taxpayer's failure to file gift tax returns was due to reasonable cause, and not willful neglect and, therefore, there was no liability for additions to tax. (Sec. 3612(d), '39 Code; Sec. 6051, '54 Code.)

Louis Fabrikant, 39 T.C. 714, Acq., 1964–1 (Part 1) C.B. 4.

54.11 Failure to file gift tax return; '39 Code. Taxpayers were not liable for additions to tax under section 6651(a) of the '54 Code for failure to file timely gift tax returns reporting transactions taxable under the '39 Code. (Sec. 6651, '54 Code.)

J.W. Kelley, 63 T.C. 321, Acq., 1977–2 C.B. 1.

54.12 Failure to file return; prepared and executed by Service. A return prepared and executed by the Service under section 6020(b) stops the running of the delinquency period for purposes of additions under section 6651(a)(1) for failure to file; furthermore, additions under section 6651(a)(2) for failure to pay the amount shown on the return are not applicable. §§301.6020–1, 301.6651–1. (Secs. 6020, 6651; '54 Code.)

Rev. Rul. 76–562, 1976–2 C.B. 430.

54.13 Failure to file return; trustee in bankruptcy. Where an arrangement proceeding under Chapter XI of the Bankruptcy Act is terminated and a petition in bankruptcy is filed before taxes become payable, a superseding trustee is not liable for interest on taxes incurred by the debtor in possession during the arrangement proceeding. Since no interest on any of the taxes accrued beyond the period of the arrangement proceeding, no interest could accumulate on a trust fund composed of withholding and cabaret taxes incurred by the debtor in possession which did not become payable until after the arrangement proceeding was terminated. The superseding trustee is liable for penalties for failure to file timely returns.§§1.6012–3, 301.6011–1, 301.6601–1, 301.6659–1. (Secs. 6011, 6012, 6601, 6659; '54 Code.)

Nicholas, 384 U.S. 678, Ct. D. 1912, 1966–2 C.B. 511.

54.14 Failure to file timely return; proof. The taxpayers' joint return bore signatures dated April 12, 1957. The return was due on April 15, and was stamped as "received" in the district directors office on April 19. At the trial, the Commissioner failed to produce the envelope in which the return was enclosed or evidence regarding the actual receipt of the return. *Held,* the return was timely filed and no late filing penalty was imposed. (Sec. 6651, '54 Code.)

Max Kralstein, 38 T.C. 810, Acq., 1963–2 C.B. 4.

54.15 Failure to file timely return; reliance on agent; reasonable cause. The failure to file a timely tax return is not excused by the taxpayer's reliance on an agent, and such reliance is not reasonable cause for late filing under section 6651(a)(1). §301.6651–1. (Sec. 6651, '54 Code.)

Boyle, 469 U.S., Ct. D. 2030, 1985–1 C.B. 372.

54.16 Failure to pay tax; deficiency in deposit. The Service is unable to approve any plan or method where taxes required to be deposited may be deposited in an amount less than the amount of taxes actually collected. However, the penalty will not be imposed if the deficiency in the amount deposited is less than one percent. (Sec. 6302, '54 Code.)

Rev. Rul. 55–271, 1955–1 C.B. 196.

54.17 Failure to pay; extension of time for filing. The penalty imposed by section 6651 for failure to pay tax timely, will be applied after November 24, 1975, to any Federal tax for which a taxpayer is granted an extension of time to file a return. §§20.6081–1, 20.6151–1, 20.6161–1, 301.7805–1. (Secs. 6081, 6151, 6161, 7805; '54 Code.)

Rev. Rul. 75–364, 1975–2 C.B. 466.

54.18 Fraud; assessment and collection after taxpayer's death. The 50 percent addition to tax for fraud that was not assessed during a taxpayer's life may be assessed and collected after his death. G.C.M. 22326 superseded. §§301.6653–1, 301.6659–1. (Secs. 6653, 6659; '54 Code.)

Rev. Rul. 73–293, 1973–2 C.B. 413.

54.19 Negligence; reliance on attorney's advice. A taxpayer, who relied on an experienced attorney's written opinion that the taxpayer's disclaimer of a remainder interest in a testamentary trust did not constitute a gift, was not liable for an addition to tax under section 6653(a) for failure to disclose the disclaimer on a gift tax return. (Sec. 6653, '54 Code.)

Lois P. Cottrell, 72 T.C. 46, Acq., 1979–2 C.B. 1.

54.20 Non-pecuniary loss penalties not claimed in bankruptcy proceedings; Tax Court jurisdiction. Income tax deficiencies and additions to the tax (fraud penalties) were assessed and proof of claim for the tax deficiencies was timely filed with the Bankruptcy Court. Section 57 of the Bankruptcy Act bars the allowance in bankruptcy of a claim for a nonpecuniary loss Federal tax penalty, e.g. a fraud penalty. Taxpayers filed a petition with the Tax Court for redetermination of the deficiencies and a motion for dismissal for lack of jurisdiction was filed on behalf of the Commissioner. *Held,* section 6871(b) of the Code does not bar the taxpayers from petitioning the fraud penalties which were not included in the proof of claim filed although they were assessed along with the tax. The Bankruptcy Court could not have allowed the fraud penalties and, therefore, the purpose of section 6871 does not require a taxpayer to be denied access to the Tax Court. (Secs. 6871, 7442; '54 Code.)

John V. Prather, 50 T.C. 445, Nonacq., 1973–1 C.B. 2.

Period of limitation
(See: Limitation period)

Powers of attorney
(See: Attorneys and agents)

Practice before the Service
(See: Attorneys and agents)

Publicity of information

56.1 Disclosure authorization lists; business entities. Procedures are set forth by which business entities may submit letters authorizing the Service to disclose confidential tax information to certain employees listed in the authorization. §404.6103(c)–1. (Sec. 601.502, S.P.R.; Sec. 6103, '54 Code.)

Rev. Proc. 80–46, 1980–2 C.B. 779.

56.2 Distributee of estate. The returns of a decedent who dies intestate shall be open to inspection to any heir at law, next of kin, or beneficiary who is a distributee of the estate of the decedent under applicable State law, or by any duly constituted attorney in fact of one of such persons.§39.55–1. (Sec. 55, '39 Code; Sec. 6103, '54 Code.)

Rev. Rul. 54–379, 1954–2 C.B. 121.

56.3 Offers in compromise The jurisdictional changes pertaining to the consideration and disposition of offers in compromise and general guidelines relating to the acceptability of an offer in compromise are set forth. Rev. Procs. 64–44 and 66–53 superseded. §301.7122–1. (Sec. 601.203, S.P.R.; Sec. 7122, '54 Code.)

Rev. Proc. 80–6, 1980–1 C.B. 586.

56.4 Returns and related documents. Returns and related documents with respect to estate and gift taxes shall be open to inspection, at the discretion of the District Director, to certain classes of persons having a material interest which will be affected by information contained in such returns. Rules providing the procedures to be followed in permitting inspection of returns and related documents and the increase in charges effective February 1, 1966, for furnishing copies and certifications of such returns and documents, are set forth. Rev. Proc. 62–9 superseded. Rev. Rul. 229 sets forth the procedures for the inspection of returns under the 1939 Code. Modified by Rev. Proc. 84–71. §§301.6103(a)–1, 301.6103(a)–2. (Sec. 601.702, S.P.R.; Sec. 6103, '54 Code.)

Rev. Rul. 229, 1953–2 C.B. 152; Rev. Proc. 66–3, 1966–1 C.B. 601.

56.5 Returns and related documents; charges. Fees the Service charges taxpayers for furnishing copies of returns and related documents have been changed. Rev. Proc. 66–3, as modified by Rev. Proc. 84–71 is further modified. (Sec. 601.702, S.P.R.)

Rev. Proc. 85–56, 1985–46 I.R.B. 45

56.6 Returns and related documents; charges. Increased charges for copies of returns, related documents, and for verification of Forms 1040A or 1040EZ, are provided. Rev. Proc. 66–3 modified. §§301.6103(a)–1, 301.6103(a)–2. (Sec. 601.702, S.P.R.; Sec. 6103, '54 Code.)

Rev. Proc. 84–71, 1984–44 I.R.B. 15.

56.7 State and Federal governments; blanket inspection. The Bureau is without authority to permit the blanket inspection of Federal estate and gift tax returns by State officials or by branches of the Government other than the Treasury Department. (Sec. 55, '39 Code; Sec. 6103, '54 Code.)

Rev. Rul. 132, 1953–2 C.B. 150.

56.8 State governments. Procedures are set forth relating to (1) the inspection by State governments of certain Federal tax returns and related documents, (2) the furnishing to State governments of copies, abstract data, or transcripts of such returns and documents, (3) the increase in charges, effective February 1, 1966, for copies of returns and each certification, and (4) penalty for unlawful disclosure of Federal income tax information by State employees. Rev. Proc. 62–18 superseded. Procedures for inspection by States of returns filed under the 1939 Code are set forth in Rev. Rul. 54–349 as modified by Rev. Proc. 58–15.§§301.6103(a)–1, 301.6103(b)–1, 301.6106–1. (Sec. 601.702, S.P.R.; Secs. 6103, 6106, '54 Code.)

Rev. Proc. 66–4, 1966–1 C.B. 607.

56.9 Use in private litigation. Guidelines for persons requesting the production of records or the testimony of officers or employees of the Revenue Service in litigation in which the Federal Government is not a party. Rev. Proc. 66–43 superseded.§§301.6103(a)–2, 301.9000–1. (Secs. 6103, 7213; '54 Code.)

Rev. Proc. 73–6, 1973–1 C.B. 752.

Records
(See: Books and records)

Refunds and credits

60.1 Adjusted interest rate. The interest rate to be charged on underpayments or paid on overpayments after January 1976 will be determined not later than October 15, 1975, based on the adjusted prime rate charged by commercial banks during September 1975. (Sec. 6621, '54 Code.)

Rev. Rul. 75–165, 1975–1 C.B. 375.

60.2 Bankruptcy estate. A procedure is provided for the trustee (or debtor in possession) representing the bankruptcy estate to file a claim for credit or refund for any overpayment of tax. §301.6402–2. (Sec. 601.105, S.P.R.; Sec. 6402, '54 Code.)

Rev. Proc. 81–18, 1981–1 C.B. 688.

60.3 Barred from assessment; offset against overpayment. Interest and penalties barred by the statute from assessment will be considered in determining the amount of an overpayment allowable on the basis of a timely filed claim for the same taxable year and the same type of tax.§301.6402–1. (Sec. 3770, '39 Code; Sec. 6402, '54 Code.)

Rev. Rul. 56–492, 1956–2 C.B. 949.

60.4 Claims; forms; 870 or 890 series. An Internal Revenue Service form of the 870 or 890 series on which a taxpayer agrees to an overassessment of estate or gift tax determined by the Service will, if executed and filed within the statutory period of limitations for filing a claim for credit or refund, be considered a valid claim for credit or refund of any overpayment of tax attributable to the overassessment. The grounds upon which the overassessment was determined by the Service shall be considered the basis of the claim.§301.6402–2. (Sec. 6402, '54 Code.)

Rev. Rul. 68–65, 1968–1 C.B. 555.

60.5 Claims; limitation period. A claim for refund of federal estate tax based on an additional state death tax credit claimed under section 2011 may be made during the 2-year period for filing a claim for refund under section 6511(a) even though the 4-year period of limitation under section 2011(c) has expired. Rev. Rul. 56-568 superseded. §§20.2011-1, 301.6511(a)-1. (Secs. 2011, 6511; '54 Code.)

Rev. Rul. 81-263, 1981-2 C.B. 169.

60.6 Claims; limitation period. Correspondence received within four years after filing the Federal estate tax return, clearly indicating an intent to claim credit for state inheritance taxes, may be considered as a claim filed within the statutory period. In such case the supporting evidence need not be submitted within the statutory period so long as the taxes were actually paid within four year. §81.9. (Sec. 813(b), '39 Code; Sec. 2011, '54 Code.)

Rev. Rul. 55-380, 1955-1 C.B. 462.

60.7 Claims; limitation period; Armed Forces; combat zone. The last date for the timely performance of the acts enumerated in section 7508, relating to an individual serving in a combat zone, is determined by adding to the time to be disregarded under section 7508 the time which remained for the performance of such acts at the time the individual entered the combat zone. (Secs. 6072, 7508; '54 Code.)

Rev. Rul. 76-425, 1976-2 C.B. 447.

60.8 Claims; timeliness. Where the last day of the limitation period for filing a claim for credit or refund falls on a Saturday, Sunday, or legal holiday and the claim is filed on the next succeeding day which is not a Saturday, Sunday, or legal holiday, the amount of refund allowable is not limited even though no tax was paid within the three-year period immediately preceding the date of actual filing of the claim. Rev. Rul. 57-354, which deals with the timeliness of claims for credit or refund under the 1939 and 1954 Codes in cases where no return was filed or where the return filed was delinquent, is superseded with respect to its application of the 1954 Code.§§39.322-7, 301.6511(a)-1, 301.6511(b)-1, 301.7503-1. (Sec. 322, '39 Code; Secs. 6511, 7503, '54 Code.)

Rev. Rul. 57-354, 1957-2 C.B. 913; Rev. Rul. 66-118, 1966-1 C.B. 290.

60.9 Claims; timeliness; assessment after limitation period expires. The Service is barred from assessing the payment of an agreed deficiency plus interest after the running of the period of limitation of assessment. However, the advance payment of the deficiency plus interest does not constitute an overpayment of tax so as to entitle the taxpayer to a refund. Rev. Rul. 74-580 distinguished. §§301.6401-1, 301.6402-1, 301.6501(a)-1. (Secs. 6401, 6402, 6501; '54 Code.)

Rev. Rul. 85-67, 1985-1 C.B. 364.

60.10 Claims; timeliness; assessment and payment after limitation period expires. A claim for refund of a tax assessed and paid after the expiration of the period of limitations on assessment must be filed within two years of the date of payment. The decision in *Thompson* will no longer be followed.§§301.6401-1, 301.6402-2, 301.6501(a)-1, 301.6511(a)-1. (Secs. 6401, 6402, 6501, 6511; '54 Code.)

Rev. Rul. 74-580, 1974-2 C.B. 400.

60.11 Credit for inheritance taxes; interest on refund. Where refunds of Federal estate tax are made in cases involving credit for State inheritance taxes, a refund based entirely on credit for State inheritance taxes will be made without interest, a refund based partially on credit for State inheritance taxes and partially on other adjustments will bear interest only on that portion of the refund attributable to other adjustments other than the credit for State inheritance taxes, and a refund based entirely on adjustments other than credit for State inheritance taxes will bear interest on the entire amount of the refund. Rev. Rul. 55-69 superseded.§§81.9, 20.2011-1. (Sec. 813(b), '39 Code; Sec. 2011, '54 Code.)

Rev. Rul. 61-58, 1961-1 C.B. 414.

60.12 Credit for inheritance taxes; interest on refund. A decedent's estate is not entitled to a refund of the interest paid on a deficiency that is later reduced by the allowance of a state death tax credit under section 2011(a). §§20.2011-1, 301.6601-1, 301.6611-1. (Secs. 2011, 6601, 6611; '54 Code.)

Rev. Rul. 79-219, 1979-2 C.B. 401.

60.13 Estate tax; installment payments; extension of time; deficiency or overpayment; closely held business. Examples illustrate the amount due when installment payments are recomputed because of determinations of deficiencies, overpayments, and changes in the ratio of the value of an interest in a closely held business to the value of the estate. §§20.6166-1, 20.6166A-1, 301.6402-1, 301.6403-1. (Secs. 6166, 6166A, 6402, 6403; '54 Code.)

Rev. Rul. 81-294, 1981-2 C.B. 237.

60.14 Estate tax; installment payments; prior transfers. If the estate tax of a transferor decedent is being paid in section 6166 installments, only the amount of installments actually paid is to be used in computing the section 2013 credit for the estate of the transferee decedent. §§2013-2, 20.6166-1, 301.6511(a)-1. (Secs. 2013, 6166, 6511; '54 Code.)

Rev. Rul. 83-15, 1983-1 C.B. 224.

60.15 Gift tax; overassessment of wife and deficiency of spouse. Prior to marriage a gift was made by the husband to a third party, and one-half of the value was included in the gift tax return of each of the spouses with the tax shown to be due on both returns paid by the husband. An overassessment of tax on the wife's return may be applied against a deficiency assessed against the husband and a claim for refund of the overassessment by the wife may be rejected in full.§301.6402-1. (Sec. 6402, '54 Code.)

Rev. Rul. 59-39, 1959-1 C.B. 639.

60.16 Interest rate. Examples are provided for the computation of the 9 percent interest rate on underpayments and overpayments of tax, effective on July 1, 1975, under the provisions of section 6621 of the Code as added by Pub. L. 93-625. §§301.6332-1, 301.6601-1, 301.6602-1, 301.6611-1, 301.7426-1. (Secs. 6332, 6601, 6602, 6611, 6621, 7426; '54 Code.)

Rev. Rul. 75-58, 1975-1 C.B. 374.

60.17 Offset; barred overpayment against assessments. Under the doctrine of equitable recoupment, a barred overpayment of Federal estate tax may be applied against outstanding assessments of income tax due by a decedent for years preceeding his death if a claim therefor was made within the period provided by the statute of limitation applicable to such deficiency. However, the doctrine of equitable recoupment does not apply where the taxpayer litigates the deficiency by filing a petition in the Tax Court. Rev. Rul. 55-226 revoked.§301.6511(b)-1. (Sec. 6511, '54 Code.)

Rev. Rul. 71-56, 1971-1 C.B. 404.

60.18 Overpayment exceeding $200,000 offset by merger partner's deficiency. A merged corporation's deficiency for a tax year before the merger may not offset an overpayment of its merger partner for a premerger tax year to determine whether a refund report must be made to the Joint Committee on Taxation. §301.6405-1. (Sec. 6405, '54 Code.)

Rev. Rul. 81-77, 1981-1 C.B. 582.

60.19 Overpayment with extension of time request; interest. The excess of the amount paid with a request for an extension of time to file over the final tax liability shown on an estate or gift tax return is an overpayment. Interest is due and payable from the last date prescribed for filing the return, determined without regard to any extension, to a date 30 days prior to the date of the refund check. §§20.6081-1, 20.6151-1, 25.6081-1, 25.6151-1, 301.6401-1, 301.6611-1. (Secs. 6081, 6151, 6401, 6611; '54 Code.)

Rev. Rul. 81-189, 1981-2 C.B. 240.

60.20 Promissory note unsatisfied at death. The gratuitous transfer of a legally binding promissory note is a completed gift under section 2511. If the note has not been satisfied at the promisor's death, no deduction is allowable under section 2053(a)(3) for the promisee's claim with respect to the note. The completed gift is not treated as an adjusted taxable gift in computing the tentative estate tax under section 2001(b)(1). Rev. Rul. 67-396 clarified. §§20.2053-4, 25.2511-1, 25.2512-4. (Secs. 2001, 2053, 2511, 2512; '54 Code.)

Rev. Rul. 84-25, 1984-1 C.B. 191.

60.21 Restricted interest. Guides and instructions for the computation of restricted interest are set forth. Modified to provide that rules regarding restriction of interest are not applicable where one taxpayer's overpayment is credited, with his consent, to another taxpayer's deficiency. Rev. Proc. 60-17 modified by Rev. Procs. 83-58 and 84-66. §§301.6601-1, 301.6611-1. (Sec. 601.104, S.P.R.; Sec. 3771, '39 Code; Secs. 6601, 6611, '54 Code.)

Rev. Proc. 60-17, 1960-2 C.B. 942; Rev. Proc. 65-20, 1965-2 C.B. 1003.

60.22 Restricted interest. If an overpayment is applied as credit to unpaid interest, penalty, or addition to tax for the same year and type of tax, interest is allowed from the date of overpayment to the date of assessment of the amount to which the credit is applied. Rev. Proc. 60-17 modified. §301.6611-1. (Sec. 601.104, S.P.R.; Sec. 6611. '54 Code.)

Rev. Proc. 83-58, 1983-2 C.B. 575.

60.23 Split gift made within 3 years of spouses deaths. If a decedent's spouse dies after the decedent, and a gift that the decedent consented to split is includible in the spouse's estate, the decedent's estate is entitled to recompute its tax. §25.2513-1. (Secs. 2001, 2035, 2512; '54 Code.)

Rev. Rul. 81-85, 1981-1 C.B. 452.

60.24 Unified credit; tax conventions. The term "specific exemption" referred to in the estate tax conventions between the United States and Australia, Finland, Greece, Italy, Japan, Norway, and Switzerland may not be construed to include the section 2010 unified credit added to the Code by the Tax Reform Act of 1976. Accordingly, the estate of a citizen and resident of Switzerland is entitled to only the $3,600 unified credit. (Sec. 2101, '54 Code.)

Rev. Rul. 81-303, 1981-2 C.B. 255.

Regulations

62.1 Effective date. The promulgation date of a Treasury regulation or Treasury decision is the date the document is filed by the Division of the Federal Register for public inspection. Ordinarily, a document is published in the Federal Register for the day following the date on which it is filed. (Sec. 7805, '54 Code.)

Rev. Rul. 56-517, 1956-2 C.B. 966.

62.2 Reference to 1939 Code. Any reference in any regulations or other executive document to any provision of the Internal Revenue Code of 1939 shall be deemed also to refer to the corresponding provision of the Internal Revenue Code of 1954 unless inconsistent or otherwise inappropriate.

E.O. 10574, 1954-2 C.B. 732.

62.3 Title heading; revised. Effective January 1, 1961, the regulations under both the 1939 and 1954 Codes were redesignated under the heading, "Title 26 – Internal Revenue." In the Code of Federal Regulations, the regulations under tax conventions were transferred to Subchapter G and redesignated.

Announcement (CFR Editorial Redesignations), 1961-1 C.B. 863.

Reproduction of forms and returns

(See: Forms)

Returns

(See also: Forms; Publicity of information)

64.1 Agent's declaration. An agent who prepares a Federal estate tax return is not prevented from later assisting the taxpayer in establishing a different value for items of property shown on that return.§81.65. (Sec. 821, '39 Code; Secs. 6018, 6065, '54 Code.)

Rev. Rul. 54-36, 1954-1 C.B. 199.

64.2 Alternate valuation; election after filing of return. Where the value of the decedent's gross estate at the date of death does not exceed the statutory exemption of $60,000, a Federal estate tax return, Form 706, filed with respect to the estate is not a return. Consequently an election to apply the alternate valuation provisions contained in section 2032 of the Code is not authorized. (Sec. 2032, '54 Code.)

Rev. Rul. 56-60, 1956-1 C.B. 443.

64.3 Amended; optional valuation. Under certain conditions, the executor of an estate may supersede an estate tax return previously filed to elect to value the gross estate under the optional valuation method.§§81.11, 81.63. (Secs. 811(j), 821, '39 Code; Secs. 2032, 6018, 6065, '54 Code.)

Rev. Rul. 54-445, 1954-2 C.B. 301.

64.4 Armed Forces; combat zone; due date. The last date for the timely performance of the acts enumerated in section 7508, relating to an individual serving in a combat zone, is determined by adding to the time to be disregarded under section 7508 the time which remained for the performance of such acts at the time the individual entered the combat zone. (Secs. 6072, 7508; '54 Code.)

Rev. Rul. 76-425, 1976-2 C.B. 447.

64.5 Certification of will. The certification of a copy of a will required by the estate tax regulations must be made by the register of wills or his authorized representative.§81.65. (Sec. 821, '39 Code; Secs. 6018, 6065, '54 Code.)

Rev. Rul. 54-35, 1954-1 C.B. 198.

64.6 Date and time of death; nonresident citizens. The date and time of death of a nonresident citizen of the U.S. who died in the foreign country of his domicile is the established day and time in the place of his domicile at the instant of death. Rev. Rul. 66-85 modified.§20.2031-1. (Sec. 2031, '54 Code.)

Rev. Rul. 74-424, 1974-2 C.B. 294.

64.7 Date and time of death; resident citizens. Where a U.S. citizen dies in one time zone while domiciled in the U.S. in another zone, the time and date of decedent's death for Federal estate tax purposes is the time and date prevailing at the instant of death in his domicile and the place where the estate tax return is to be filed. Modified by Rev. Rul. 74-424.§20.2031-1. (Sec. 2031, '54 Code.)

Rev. Rul. 66-85, 1966-1 C.B. 213.

64.8 Examination; bankruptcy estates. Procedures are provided for the trustee (or debtor in possession) to obtain a prompt determination by the Service of any unpaid tax liability of the bankruptcy estate incurred during the administration of the estate. (Sec. 601.105, S.P.R.)

Rev. Proc. 81-17, 1981-1 C.B. 688.

64.9 Examination; bankruptcy estates. A trustee or other fiduciary of a bankruptcy estate who is ready to close the estate may obtain an expeditious audit of any Federal tax returns filed by the fiduciary. (Sec. 601.105, S.P.R.)

Rev. Proc. 76-23, 1976-1 C.B. 562.

64.10 Examination; charitable deduction; remainder or income interest; split-interest trust. Expanded guidelines are provided for settling cases governed by section 2055 of the Code prior to the Tax Reform Act of 1969 involving a charitable deduction for an income or remainder interest in a split-interest trust whose trustee is permitted to exercise administrative or investment powers that may render the value of the interest in the trust unascertainable. Rev. Proc. 73-9 superseded.§20.2055-2. (Sec. 601.105, S.P.R.; Sec. 2055, '54 Code.)

Rev. Proc. 74-6, 1974-1 C.B. 417.

64.11 Examination; reopening closed cases. Rules are set forth governing the reopening of cases closed by district offices or service centers. Certain types of cases in which reconsideration is not considered a reopening are listed. Rev. Proc. 81-35 superseded. §301.7605-1. (Sec. 601.105, S.P.R.; Sec. 7605, '54 Code.)

Rev. Proc. 83-19, 1983-1 C.B. 677.

64.12 Failure to file; delinquency penalty; changes under 1954 Code. The effect of the delinquency penalty provisions of the Internal Revenue Code of 1954 is set forth. (Sec. 6651, '54 Code.)

Rev. Rul. 54-427, 1954-2 C.B. 42.

64.13 Failure to file; extension of time; addition to tax. An estate or donor of a gift is subject to the addition to the tax for failure to file timely when the tax due on the return is paid with the filing for an extension of time but the return is not filed until after the period covered by the extension, and reasonable cause is not established. §§20.6075-1, 25.6075-1, 20.6081-1, 25.6081-1, 20.6151-1, 25.6151-1, 20.6161-1, 25.6161-1, 301.6651-1. (Secs. 6075, 6081, 6151, 6161, 6651; '54 Code.)

Rev. Rul. 81-237, 1981-2 C.B. 245.

64.14 Gift tax; contributions; political party. A contribution to a political party or to any candidate for public office does not constitute a gift for public purposes and one who makes such a contribution in excess of $3,000, or a husband and wife who make such a contribution in excess of $6,000, must file a Federal Gift Tax Return, Form 709. §§25.2513-1, 25.2521-1, 25.2522(a)-1, 25.6019-1. (Secs. 2513, 2521, 2522, 6019; '54 Code.)

Rev. Rul. 59-57, 1959-1 C.B. 626.

64.15 Gift tax; deceased spouse; executed consent. The spouse of a donor died prior to the due date of the donor's required gift tax return without executing the necessary consent and without executing and filing her own gift tax return. The decedent did not leave an estate which required administration. *Held*, where no legal representative has been appointed and where the surviving spouse has not remarried prior to the end of the calendar year, the surviving donor-spouse may act as the "executor" for the purpose of executing the consent and also executing and filing the gift tax return on behalf of his deceased consenting spouse.§§25.2513-2, 25.6019-2. (Secs. 2513, 6019; '54 Code.)

Rev. Rul. 67-55, 1967-1 C.B. 278.

64.16 Gift tax; employees death benefit turned over to third party. A lump-sum distribution on account of the death of an employee was made to a beneficiary who was a dependent of another taxpayer and who immediately turned over the entire amount to the widow of the deceased employee. Should the amount turned over to the widow be in excess of $3,000, gift tax returns will be required to be filed.§86.20. (Sec. 1006, '39 Code; Sec. 6019, '54 Code.)

Rev. Rul. 55-460, 1955-2 C.B. 591.

64.17 Gift tax; low interest and interest-free demand loans. Valuation and reporting requirements are set forth for gifts resulting from low-interest and interest-free demand loans outstanding during 1984 and prior years. §§25.2511-1, 25.2512-1. (Sec. 601.602, S.P.R.; Secs. 2511, 2512, 7872, '54 Code.)

Rev. Proc. 85-46, 1985-37 I.R.B. 104.

64.18 Gift tax; no gift made by spouse; split gifts. Where husband and wife have consented to treat gifts made by one spouse to third-party donees as having been made one-half by each of them, the spouse of the donor is not required to file a Federal gift tax return if he or she made no gifts during the calendar year and the value of gifts made by the donor spouse to each such third-party donee during the year does not exceed $6,000. The consent of the husband and wife is to be signified by each of them on the donor's return.§86.20. (Sec. 1006, '39 Code; Sec. 6019, '54 Code.)

Rev. Rul. 54-252, 1954-2 C.B. 322.

64.19 Gift tax; ratification of consent; split gifts. Gift-splitting benefits are available to a husband and his wife where the gift tax return and consent of the absent husband are filed by the wife as his agent and ratified by him within a reasonable time.§§86.3(a), 86.20. (Secs. 1000, 1006, '39 Code; Secs. 2511, 6019, '54 Code.)

Rev. Rul. 54-6, 1954-1 C.B. 205.

64.20 Gift tax; spouse's name signed by taxpayer. A spouse who made a gift, the value of which exceeded the credits and exclusions if gift-splitting was properly elected, may not validly sign the name of the other spouse on the taxpayer signature line or consent of spouse line of returns to elect gift-splitting in the absence of facts or circumstances permitting such signature as agent as provided by section 25.6019-1(d) of the regulations. The filing of correctly signed amended returns by the taxpayer and spouse, filed beyond the time prescribed in section 2513(b), will not perfect the prior returns and such filing is not itself a valid gift-splitting election.§25.2513-1, 25.6019-1. (Secs. 2513, 6019; '54 code.)

Rev. Rul. 78-27, 1978-1 C.B. 387.

64.21 Inspection; Advisory Commission on Intergovernmental Relations. Any return made under the Internal Revenue Code of 1939 or 1954 with respect to estate and gift taxes shall be open to inspection by the Advisory Commission on Intergovermental Relations. §§301.6103(a)-103, 458.326. (Sec. 55, '39 Code; Sec. 6103, '54 Code.)

E.O. 10962, 1961-2 C.B. 229; T.D. 6570, 1961-2 C.B. 229.

64.22 Inspection; charges for copies. Fees the Service charges taxpayers for furnishing copies of returns and related documents have been changed. Rev. Proc. 66-3, as modified by Rev.

Proc. 84–71 is further modified. (Sec. 601.702, S.P.R.)

Rev. Proc. 85–56, 1985–46 I.R.B. 45.

64.23 Inspection; charges for copies and verification. Increased charges for copies of returns, related documents, and for verification of Forms 1040A or 1040EZ, are provided. Rev. Proc. 66–3 modified. §§301.6103(a)–1, 301.6103(a)–2. (Sec. 601.702, S.P.R.; Sec. 6103, '54 Code.)

Rev. Proc. 84–71, 1984–44 I.R.B. 15.

64.24 Inspection; committees of Congress. Estate and gift tax returns for specified years are open to inspection by the committees of Congress and their duly authorized subcommittees, subject to prescribed limitations. Citations for Executive Orders and Treasury Decisions are listed below:

General Authorization
1954–1 C.B. 84.
1955–1 C.B. 142.
1955–1 C.B. 335.

Banking and Currency
1965–2 C.B. 436.

Education and Labor
1954–2 C.B. 731.

Government Operations
1953–1 C.B. 95.
1953–1 C.B. 97.
1954–2 C.B. 120.
1955–1 C.B. 144.
1959–1 C.B. 633.
1961–2 C.B. 228.
1963–1 C.B. 303.
1965–1 C.B. 535.
1967–1 C.B. 341.
1969–1 C.B. 301.
1972–1 C.B. 382.
1976–1 C.B. 541

Internal Security
1969–1 C.B. 301.
1971–2 C.B. 407.
1973–2 C.B. 403.

Judiciary
1953–1 C.B. 94.
1953–1 C.B. 95.
1954–2 C.B. 731.
1970–2 C.B. 289.

Public Works
1960–1 C.B. 626.
1961–2 C.B. 227.
1963–1 C.B. 304.
1965–1 C.B. 535.
1967–2 C.B. 410.
1969–1 C.B. 301.
1971–2 C.B. 408.
1973–1 C.B. 594.

Select Committee on Crime
1972–1 C.B. 382.

Un-American Activities
1955–2 C.B. 493.
1957–1 C.B. 437.
1959–1 C.B. 632.
1961–1 C.B. 692.
1963–1 C.B. 304.
1965–1 C.B. 536.
1967–2 C.B. 409.

Agriculture and Forestry
1959–2 C.B. 381.

Armed Services
1962–1 C.B. 289.

Banking and Currency
1954–1 C.B. 84.

Commerce
1971–2 C.B. 408.
1973–1 C.B. 595.

Committee on the Judiciary
1953–1 C.B. 92.
1953–1 C.B. 93.
1955–2 C.B. 492.
1957–1 C.B. 438.
1957–1 C.B. 439.
1959–1 C.B. 631.
1962–1 C.B. 288.
1964–1 (Part 1) C.B. 479.
1970–1 C.B. 268.

Foreign Relations
1962–2 C.B. 310.
1963–1 C.B. 302.

Government Operations
1953–1 C.B. 89.
1953–1 C.B. 90.
1955–1 C.B. 143.
1957–1 C.B. 436.
1959–1 C.B. 631.
1961–1 C.B. 691.
1963–1 C.B. 303.
1965–1 C.B. 534.
1967–1 C.B. 341.
1969–1 C.B. 301.
1971–1 C.B. 400.
1973–1 C.B. 594.
1975–1 C.B. 642

Interstate and Foreign Commerce
1953–1 C.B. 91.
1953–1 C.B. 92.

Labor and Public Welfare
1954–2 C.B. 732.

Rules and Administration
1953–1 C.B. 88.
1953–1 C.B. 89.
1964–1 (Part I) 478.
1965–1 C.B. 533.

Select Committee
1957–1 C.B. 438.
1959–1 C.B. 630.

Standards and Conduct
1968–1 C.B. 540.

64.25 Inspection; delegation of authority; Commissioner. The functions of the Secretary of the Treasury prescribed by any treasury decision relating to the granting of permission to inspect returns to any agency of the Executive Branch of the United States Government have been delegated to the Commissioner of Internal Revenue. Such functions may be exercised by any officer or employee of the Revenue Service who is so authorized by the Commissioner.

Treas. Dept. Order 150–35 (Rev. 1), 1959–1 C.B. 767.

64.26 Inspection; distributee of estate. The returns of a decedent who dies intestate shall be open to inspection to any heir at law, next of kin, or beneficiary who is a distributee of the estate of the decedent under applicable State law, or by any duly constituted attorney in fact of one of such persons.§39.55–1. (Sec. 55, '39 Code; Sec. 6103, '54 Code.)

Rev. Rul. 54–379, 1954–2 C.B. 121.

64.27 Inspection; economic stabilization. Authority to inspect returns described under section 6103(a)(2) of the Code without making written application is given to officers and employees of the Department of the Treasury including the Revenue Service and the Office of Chief Counsel whose duties include the administration or enforcement of the provisions of the Economic Stabilization Act of 1970, as amended. §301.6103(a)–109. (Sec. 6103, '54 Code.)

E.O. 11682, 1972–2 C.B. 637; T.D. 7205, 1972–2 C.B. 636.

64.28 Inspection; general rules. Returns and related documents made in respect of estate and gift taxes shall be open to inspection, at the discretion of the District Director, to certain classes of persons having a material interest which will be affected by information contained in such returns. Rules providing the procedures to be followed in permitting inspection of returns and related documents and the increase in charges effective February 1, 1966, for furnishing copies and certifications of such returns and documents, are set forth. Rev. Proc. 62–9 superseded. Rev. Rul. 229 sets forth the procedures for the inspection of returns under the 1939 Code. Modified by Rev. Proc. 84–71. §§301.6103(a)–1, 301.6103(a)–2. (Sec. 601.702, S.P.R.; Sec. 55, '39 Code; Sec. 6103, '54 Code.)

Rev. Rul. 229, 1953–2 C.B. 152; Rev. Proc. 66–3, 1966–1 C.B. 601.

64.29 Inspection; general rules. Authority to inspect certain returns by certain classes of persons and State and Federal Government establishments shall be in accordance with regulations in enumerated Treasury Decisions. Regulations provide that other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, relating to returns, including any reproductions or recordings thereof, are open to inspection.§301.6103(a)–1. (Sec. 6103, '54 Code.)

E.O. 11650, 1972–1 C.B. 381; T.D. 7162, 1972–1 C.B. 382.

64.30 Inspection; litigation and grand jury proceedings. Authority to inspect certain returns for use in grand jury proceedings and in litigation by United States attorneys and attorneys of the Department of Justice.§301.6103(a)–1. (Sec. 6103, '54 Code.)

E.O. 11706, 1973–1 C.B. 592; T.D. 7266, 1973–1 C.B. 593.

64.31 Inspection; President and authorized White House employees. Restrictions have been placed on taxpayers' returns that may be delivered to or open to inspection by the President, or the employees of the White House Office that may be authorized to receive or inspect such returns on the President's behalf, and on disclosure of information from such returns. §301.6103(a)–1. (Sec. 6103, '54 Code.)

E.O. 11805, 1974–2 C.B. 394.

64.32 Inspection; State and Federal governments. The Bureau is without authority to permit the blanket inspection of Federal estate and gift tax returns by State officials or by branches of the Government other than the Treasury Department. (Sec. 55, '39 Code; Sec. 6103, '54 Code.)

Rev. Rul. 132, 1953–2 C.B. 150.

64.33 Inspection; State governments. Procedures are set forth relating to (1) the inspection by State governments of certain Federal tax returns and related documents; (2) the furnishing to State governments of copies, abstract data, or transcripts of such returns and documents; (3) the increase in charges, effective February 1, 1966, for copies of returns and each certification; and (4) penalty for unlawful disclosure of Federal income tax information by State employees. Rev. Proc. 62–18 superseded. Procedures for inspection by States of returns filed under the 1939 Code are set forth in Rev. Rul. 54–349 as modified by Rev. Proc. 58–15.§§301.6103(a)–1, 301.6103(b)–1, 301.6106–1. (Sec. 601.702, S.P.R.; Secs. 6103, 6106, '54 Code.)

Rev. Proc. 66–4, 1966–1 C.B. 607.

64.34 Inspection; State tax officials. General or "blanket" inspection of Federal estate and gift tax returns is permitted by State tax officials under rules similar to those governing inspection by such officials of Federal income tax returns, if the Commissioner or his representatives are given like cooperation in the inspection of State tax returns. (Sec. 55, '39 Code; Sec. 6103, '54 Code.)

E.O. 10738, 1957–2 C.B. 843; T.D. 6271, 1957–2 C.B. 844.

64.35 Inspection; State tax officials. E.O. 10906 which granted authority to certain classes of persons and State and Federal government establishments to inspect certain tax returns made under the 1954 Code supersedes E.O. 10738 only to the extent that such order is applicable to inspection by State tax officials after January 18, 1961, of estate and gift tax returns made under the 1954 Code.§301.6103(a)–1. (Sec. 6103, '54 Code.)

E.O. 10906, 1961–1 C.B. 681; E.O. 10954, 1961–2 C.B. 227.

64.36 Inspection; U.S. possessions officials. Officials of possessions of the U.S. may inspect returns of estate, gift, unemployment, income, and certain excise taxes. Rules are provided for the manner, time, and place of inspection. §301.6103(a)–1. (Sec. 6103, '54 Code.)

E.O. 11102, 1963–1 C.B. 299; T.D. 6646, 1963–1 C.B. 299.

64.37 Missing persons. Requirements are set forth for filing a Federal estate tax return for the estate of a missing person where (1) administration of the absentee's property is undertaken pursuant to an adjudication by a court of competent jurisdiction; (2) the absentee's assets are transferred to or vested in a beneficiary pursuant to applicable statues; or (3) the absentee's property is taken or received by any person without court order or statutory authority. Rev. Rul. 55–387, holding that for income tax purposes a missing person is considered alive until found or declared dead by a court under the provisions of the pertinent State law, is supplemented. Rev. Rul. 56–682 superseded. However, the due date for estate tax returns for persons missing prior to September 26, 1966, will be determined under Rev. Rul. 56–682, provided such date does not fall more than one year after September 26, 1966. Clarified and modified by Rev. Rul. 80–347. §§20.6018–1, 20.6075–1, 301.7805–1. (Secs. 6018, 6075, 7805; '54 Code.)

Rev. Rul. 66–286, 1966–2 C.B. 485.

64.38 Missing persons. An estate tax return must be filed within 9 months following the period of time state law sets for declaring a missing person dead. Rev. Rul. 66–286 clarified and modified. §§20.6018–1, 20.6075–1. (Secs. 6018, 6075; '54 Code.)

Rev. Rul. 80–347, 1980–2 C.B. 342.

64.39 Preparation by person other than taxpayer. Estate and gift tax returns prepared by a firm on behalf of a taxpayer may be signed, in the appropriate space, with the firm name, or the firm name may be typed or printed followed by the signature of an authorized person. Rev. Rul. 55–149 supplemented. (Sec. 6065, '54 Code.)

Rev. Rul. 58–390, 1958–2 C.B. 880.

64.40 Prepared and executed by Service; additions to tax. A return prepared and executed by the Service under section 6020(b) stops the running of the delinquency period for purposes of additions under section 6651(a)(1) for failure to file; furthermore, additions under section 6651(a)(2) for failure to pay the amount shown on the return are not applicable. §§301.6020–1, 301.6651–1. (Secs. 6020, 6651; '54 Code.)

Rev. Rul. 76–562, 1976–2 C.B. 430.

64.41 Required copies. Only the originals of certain estate and gift tax forms are required under sections 6018 and 6019 of the Code. (Secs. 6018, 6019; '54 Code.)

Rev. Rul. 56–471, 1956–2 C.B. 935.

64.42 Timely filed; taxpayer in foreign country. Tax returns mailed by taxpayers in foreign countries will be accepted as timely filed if they bear an official postmark dated on or before midnight of the last date prescribed for filing, including any extensions. §301.7502–1. (Sec. 7502, '54 Code.)

Rev. Rul. 80–218, 1980–2 C.B. 386.

Rulings

66.1 Areas in which advance rulings will not be issued. A revised list sets forth those areas of the Code under the jurisdiction of the Associate Chief Counsel (Technical) in which the Service will not issue advance rulings or determination letters. Rev. Procs. 85–22, 85–24, 85–27, 85–28, 85–34, and 85–59 superseded. (Sec. 601.201, S.P.R.)

Rev. Proc. 86–3, 1986–1 I.R.B. 26.

66.2 Issuance procedures. Revised procedures are provided for issuing rulings, determination letters, and information letters, and for entering into closing agreements on specific issues. Rev. Proc. 85–1 superseded. (Sec. 601.201, S.P.R.)

Rev. Proc. 86–1, 1986–1 I.R.B. 6.

66.3 Issuance; suggestions invited. The public is invited to submit suggestions for the publication of revenue rulings on estate tax matters. Rev. Proc. 78–7 superseded. §20.0–2. (Sec. 601.201, S.P.R.; Sec. 2001, '54 Code.)

Rev. Proc. 85–5, 1985–1 C.B. 494.

66.4 Obsolete. A program for the review of rulings published in the Internal Revenue Bulletin prior to 1953 has been established. The primary objective of this program is to identify and publish lists of those rulings which, although not specifically revoked or superseded, are not considered determinative with respect to future transactions.§301.7805–1. (Sec. 601.101, S.P.R.; Sec. 7805, '54 Code.)

Rev. Proc. 67–6, 1967–1 C.B. 576.

66.5 Obsolete. The following Revenue Rulings contain lists of rulings that are declared obsolete.§301.7805–1. (Sec. 7805, '54 Code.)

Rev. Rul. 67–97, 1967–1 C.B. 380.
Rev. Rul. 68–560, 1968–2 C.B. 601.
Rev. Rul. 70–59, 1970–1 C.B. 280.
Rev. Rul. 74–623, 1974–2 C.B. 405.
Rev. Rul. 82–127, 1982–1 C.B. 215.

66.6 Oral advice to taxpayers. Rev. Proc. 85–1, Section 16, is modified with respect to the practice of the Service regarding oral advice to taxpayers or their representatives. (Sec. 601.201, S.P.R.)

Rev. Proc. 85–50, 1985–40 I.R.B. 26.

66.7 Publication standards; revenue rulings and revenue procedures. The objective of, and standards for, publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin are revised to reflect the reorganization of the Internal Revenue Service in accordance with Treasury Department Order No. 150–95, effective March 21, 1982, under Delegation Order No. 190, the establishment of the office of the Associate Chief Counsel (International), and the responsibility of the Assistant Commissioner (Support and Services) for publishing the Internal Revenue Bulletin. Rev. Proc. 78–24 superseded. (Sec. 601.601, S.P.R.)

Rev. Proc. 86–15, 1986–11 I.R.B. 26.

66.8 Retroactive withdrawal of acquiescence. The Commissioner is empowered with discretion to retroactively correct mistakes of law in the application of the tax laws to peculiar transactions. The retroactive withdrawal of a published acquiescence in a decision of the Tax Court is not an abuse of such discretion even though a taxpayer may have acted to his detriment in reliance upon such acquiescence.§301.7805–1. (Sec. 7805, '54 Code.)

Dixon, 381 U.S. 68, Ct. D. 1898, 1965–2 C.B. 479.

66.9 Technical advice to District Directors; and Chiefs, Appeals Offices; issuance procedures. Revised procedures are provided for furnishing technical advice to District Directors and Chiefs, Appeals Offices. Taxpayer's rights, when such advice has been requested, are also set forth. Rev. Proc. 85–2 superseded. (Sec. 601.105, S.P.R.)

Rev. Proc. 86–2, 1986–1 I.R.B. 19

Seizure of property

(See: Levy)

Statute of limitations

(See: Limitation period)

Suits

68.1 Evidence; illegally obtained by police. An assessment of wagering excise taxes, based in substantial part on evidence illegally obtained by city police, was not subject to exclusion under the Fourth Amendment; the exclusionary rule should not be extended to forbid the use in the civil proceeding of one sovereign of evidence seized by a criminal law enforcement agent of another sovereign.

Janis, 428 U.S. 433, Ct. D. 1980, 1976–2 C.B. 615.

68.2 Injunction and declaratory judgment; tax-exempt status. An action for declaratory judgment and injunctive relief, to enjoin the Service to reinstate a letter ruling that a nonprofit educational organization qualifies for tax-exempt status and that contributions to the organization will constitute charitable deductions, is barred by the prohibition in section 7421 of the Code against suits restraining the assessment or collection of any tax. (Sec. 7421, '54 Code.)

"Americans United" Inc., 416 U.S. 752, Ct. D. 1963, 1974–2 C.B. 401.

68.3 Injunction prohibiting assessment and collection. A court may not, prior to the assessment and collection of any tax, enjoin the Revenue Service from revoking a ruling letter declaring that an organization qualifies for tax-exempt status and from withdrawing advance assurance to donors that contributions to the organizations will constitute charitable deductions. (Sec. 7421, '54 Code.)

Bob Jones University, 416 U.S. 725, Ct. D. 1962, 1974–1 C.B. 354.

68.4 Injunction prohibiting collection of taxes. A corporation alleging nonliability for social security and unemployment taxes could not maintain a suit enjoining collection of the taxes merely because it would suffer irreparable injury. Such a suit may be maintained only when it is clearly shown at the time of the suit the Government, under the most liberal view of the law and the facts, has no chance of ultimately prevailing. (Sec. 7421, '54 Code.)

Williams Packing and Navigation Co., 370 U.S. 1, Ct. D. 1874, 1962–2 C.B. 349.

68.5 Injunction prohibiting collection of taxes; jeopardy assessment. The Service must disclose the factual basis for a jeopardy assessment to a taxpayer who has filed suit for injunction against the collection of the tax and would suffer irreparable injury if the assessment were not restrained. (Sec. 7421, '54 Code.)

Shapiro, 424, U.S. 614, Ct. D. 1974, 1976–1 C.B. 399.

68.6 Interest rate. Examples are provided for the computation of the 9 percent interest rate on underpayments and overpayments of tax, effective on July 1, 1975, under the provisions of section 6621 of the Code as added by Pub. L. 93–625. §§301.6332–1, 301.6601–1, 301.6602–1, 301.6611–1, 301.7426–1. (Secs. 6332, 6601, 6602, 6611, 6621, 7426; '54 Code.)

Rev. Rul. 75–58, 1975–1 C.B. 374.

68.7 Intervention; judicial enforcement of summons; former employer's records. A taxpayer having no significantly protectible interest in a former employer's records has no right to intervene in a proceeding to enforce summonses issued to produce the records to aid an investigation before recommendation for criminal prosecution.§§301.7602–1, 301.7604–1. (Secs. 7602, 7604; '54 Code.)

Donaldson, f.k.a. Sweet, 400 U.S. 517, Ct. D. 1942, 1971–1 C.B. 416.

68.8 Judicial enforcement of summons; examination of records. A District Court's finding that summonses issued by a special agent to a taxpayer's bank were "solely for the purpose of unearthing evidence of criminal conduct" was not sufficient to establish that the summonses were not issued in good faith under section 7602 and, therefore, not enforceable. §§301.7602–1, 301.7604–1. (Secs. 7602, 7604; '54 Code.)

LaSalle National Bank, 437 U.S. 298, Ct. D. 1994, 1978–2 C.B. 336.

68.9 Limitation period in refund proceedings. Where a claim for refund is disallowed by means other than a registered notice of disallowance mailed to the taxpayer, unless the taxpayer has filed a written waiver of the requirement that he be mailed such registered notice of disallowance, an agreement to suspend the running of the statute of limitations for purposes of a suit based on the claim is not necessary.§301.6532–1. (Sec. 6532, '54 Code.)

Rev. Rul. 56–381, 1956–2 C.B. 953.

68.10 Limitation period; Armed Forces; combat zone. The last date for the timely performance of the acts enumerated in section 7508, relating to an individual serving in a combat zone, is determined by adding to the time to be disregarded under section 7508 the time which remained for the performance of such acts at the time the individual entered the combat zone. (Secs. 6072, 7508; '54 Code.)

Rev. Rul. 76–425, 1976–2 C.B. 447.

68.11 Marital deduction; effect of State trial court decree. Where Federal estate tax liability turns upon the character of a property interest held and transferred by the decedent under state law, Federal authorities are not bound by a determination made of such property interest by a State trial court in a proceeding in which the U.S. is not a party. State law as announced by the highest court of the State is to be followed, but where there is no decision by the highest court, Federal authority must apply what it finds to be the state law after giving "proper regard" to relevant decisions of other State courts.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Bosch, Second National Bank of New Haven, 387 U.S. 456, Ct. D. 1915, 1967–2 C.B. 337.

68.12 Private litigation; production of records and testimony of Service personnel. Guidelines for persons requesting the production of records or the testimony of officers or employees of the Revenue Service in litigation in which the Federal Government is not a party. Rev. Proc. 66–43 superseded.§§301.6103(a)–2, 301.9000–1. (Secs. 6103, 7213; '54 Code.)

Rev. Proc. 73–6, 1973–1 C.B. 752.

68.13 Self-incrimination; accountant's records; summons to attorney. A taxpayer's rights under the Fourth and Fifth Amendments are not violated by the enforcement of a summons compelling an attorney to produce an accountant's potentially incriminating records that were given to the attorney by the taxpayer. §301.7604–1. (Sec. 7604, '54 Code.)

Fisher, 425 U.S. 391, Ct. D. 1977, 1976–1 C.B. 411.

68.14 Self-incrimination; taxpayer records; summons to accountant. A taxpayer cannot claim immunity under the Fourth or Fifth Amendment to prevent an accountant from complying with the Government's summons to produce business records given him to prepare the taxpayer's tax returns.§301.7604–1. (Secs. 7402, 7604; '54 Code.)

Couch, 409 U.S. 322, Ct. D. 1955, 1973–1 C.B. 609.

68.15 Summary proceedings; rights in distrained property. A Federal District Court has no jurisdiction to determine, in a summary proceeding, the respective rights of the parties in property of a taxpayer seized by the Government for delinquent taxes; petitioner, a third party claimant, could have its claim to the distrained property adjudicated in a plenary, but not in a summary, proceeding.§301.6331–1. (Sec. 6331, '54 Code.)

New Hampshire Fire Insurance Co., 362 U.S. 404, Ct. D. 1846, 1960–1 C.B. 629.

68.16 Summons; injunctive relief from enforcement; examination of taxpayer's records. The Commissioner issued summonses to an accounting firm employed by the attorneys of a taxpayer, directing the firm to produce records pertaining to the taxpayer. The attorneys sought injunctive relief from the enforcement of the summonses, claiming that the summonses were void because the records were work product in trial preparation and the production of the records would require the taxpayer to incriminate himself and deprive him of counsel. Denial of the injunction was upheld because the legal remedy provided by the Code works no injustice, suffers no constitutional invalidity, and provides full opportunity for judicial review before any coercive sanctions may be imposed.§§301.7602–1, 301.7604–1. (Secs. 7210, 7402, 7602, 7604; '54 Code.)

Reisman, 375 U.S. 440, Ct. D. 1887, 1964–1 (Part I) C.B. 517.

68.17 Summons; judicial enforcement; examination of taxpayer's records. The Government need not show probable cause to suspect fraud where it seeks to obtain judicial enforcement of an order for examination of a taxpayer's records unless the taxpayer raises a substantial question that judicial enforcement of the administrative summons would be an abuse of process. This question must be predicated on more than the fact of re-examination and the running of the statute of limitations on ordinary tax liability. §§301.7604–1, 301.7605–1. (Secs. 7402, 7604, 7605; '54 Code.)

Powell, 379 U.S. 48. Ct. D. 1891, 1965–1 C.B. 547; Ryan, 379 U.S. 61, Ct. D. 1892, 1965–1 C.B. 552.

68.18 Temporary injunction; transfer of funds from foreign branch of domestic bank. A U.S. district court has jurisdiction to issue a temporary injunction, pending service of process on a foreign corporation and an adjudication of the substantive tax issues on the merits, enjoining a domestic bank from transferring any property or rights to property held by it at any branch office within or without the U.S. for the account of a foreign corporation against which jeopardy assessments have been made. (Sec. 7402, '54 Code.)

First National City Bank, 379 U.S. 378, Ct. D. 1895, 1965–2 C.B. 457.

Tax Court

70.1 Disposition of docketed cases. Procedures are revised for the development and disposition of cases docketed in the Tax Court. Rev. Proc. 79–59 superseded. (Sec. 601.106, S.P.R.)

Rev. Proc. 82–42, 1982–29 I.R.B. 33.

70.2 Expedition of cases; Appellate Division; Regional Counsel. In order to provide for prompt action and disposition of cases before the Tax Court; to stipulate undisputed facts as required by the Tax Court in an orderly manner and make adequate preparations for trial and defense of the Commissioner's determination of tax liabilities; and to facilitate actions under the Commissioner's Delegation Orders Nos. 60 and 66, Chief Counsel's Orders Nos. 1958–5 and 1958–11, procedures have been issued under which the Appellate Division and Regional Counsel will operate. Modified by Rev. Proc. 78–9. (Sec. 601.106, S.P.R.)

Rev. Proc. 60–18, 1960–2 C.B. 988.

70.3 Jurisdiction; bankruptcy and adjudication. Taxpayer, adjudicated bankrupt in 1923, filed a petition with the Board of Tax Appeals in 1926 for redetermination of a deficiency assessed for the year 1921. The Board originally dismissed the suit on other grounds, but was reversed by the Court of Appeals, which remanded the case for a decision on the merits. The Commissioner then raised taxpayer's bankruptcy and challenged the Board's jurisdiction under section 282(a) of the Revenue Act of 1926, which prohibits the filing of a redetermination petition after adjudication of bankruptcy. In view of the mandate of the Court of Appeals and the whole record in the proceeding, the Board denied the Commissioner's motion to dismiss. (Sec. 282(a), Rev. Act 1926; Sec. 6871, '54 Code.)

Eli McDonald, 23 B.T.A. 521, Acq. withdrawn and Nonacq. substituted, 1966–1 C.B. 4.

70.4 Jurisdiction; deficiencies not assessed or claimed in bankruptcy. Taxpayers, after being adjudicated bankrupt but before termination of the bankruptcy proceedings, filed petitions with the Tax Court for redetermination of proposed deficiencies for pre-bankrupt years. The proposed deficiencies were neither assessed or claimed in the bankruptcy proceedings. Motions were filed on behalf of the Commissioner to dismiss the petitions on the grounds that the Tax Court lacked jurisdiction under section 6871(b) of the Code. *Held,* the prohibition of section 6871(b) of the Code applies only when the deficiency has been assessed under the immediate assessment procedure authorized in section 6871(a) or where a timely proof of claim has been filed with the bankruptcy court; accordingly, the Tax Court has jurisdiction to redetermine the deficiencies. (Secs. 6213, 6871, 7442; '54 Code.)

Samuel J. King, 51 T.C. 851, Acq., 1973–1 C.B. 1; Glenn E. Stevenson, 51 T.C. 970, Acq., 1973–1 C.B. 2.

70.5 Jurisdiction; estate and widow as surviving spouse. The widow of the deceased taxpayer was the administratrix of her husband's estate. A single joint notice of deficiency for previous years' income taxes was sent to her as administratrix of the estate and as surviving spouse of the deceased. In petitioning for a redetermination of the deficiencies, she signed the petition in an individual rather than in a fiduciary capacity. *Held,* as a result of the widow signing individually rather than on behalf of the estate, the court had no jurisdiction with respect to the liability of the estate for the deficiencies. (Sec. 272(a), '39 Code; Secs. 6212, 6213, '54 Code.)

John T. Eversole, 39 T.C. 1113, Acq., 1963–2 C.B. 4.

70.6 Jurisdiction; modification of final decision. Upon the expiration of the time for filing a petition for review, a decision of the Tax Court is final and the Court has no jurisdiction to vacate, modify, or reconsider it; if it does render a later decision on it, a Court of Appeals is without jurisdiction to review that later decision. The Tax Court is an administrative agency and cannot assume the equity powers of a court. (Secs. 1140, 1142, '39 Code; Secs. 7481, 7483, '54 Code.)

Lasky, 352 U.S. 1027, Ct. D. 1804, 1957–1 C.B. 547.

70.7 Jurisdiction; non-pecuniary loss penalties not claimed in bankruptcy proceedings. Income tax deficiencies and additions to the tax (fraud penalties) were assessed and proof of claim for the tax deficiencies was timely filed with the Bankruptcy Court. Section 57 of the Bankruptcy Act bars the allowance in bankruptcy of a claim for a nonpecuniary loss Federal tax penalty, e.g. a fraud penalty. Taxpayers filed a petition with the Tax Court for redetermination of the deficiencies and a motion for dismissal for lack of jurisdiction was filed on behalf of the Commissioner. *Held,* section 6871(b) of the Code does not bar the taxpayers from petitioning the fraud penalties which were not included in the proof of claim filed although they were assessed along with the tax. The Bankruptcy Court could not have allowed the fraud penalties and, therefore, the purpose of section 6871 does not require a taxpayer to be denied access to the Tax Court. (Secs. 6871, 7442; '54 Code.)

John V. Prather, 50 T.C. 445, Nonacq., 1973–1 C.B. 2.

70.8 Jurisdiction; notice of deficiency incorrectly addressed. A notice of deficiency was addressed to the taxpayer at Des Moines, Iowa. On the 91st day the taxpayer mailed a petition which was received and filed with the Tax Court on the 93rd day. The Commissioner then filed a motion to dismiss for lack of jurisdiction because the taxpayer's petition was not filed within 90 days. At the hearing it developed that the address on the notice of deficiency was incorrect, even though it was actually received two days after it was mailed. The Commissioner maintained that a deficiency notice mailed to other than the taxpayer's last known address is nonetheless valid if actually received by the taxpayer in sufficient time to prepare and file a petition with the Tax Court. *Held,* the proceeding must be dismissed for lack of jurisdiction because no proper statutory notice was ever sent to the taxpayer. The error is not waived by the taxpayer by his filing of a petition. (Sec. 6212, '54 Code.)

John W. Heaberlin, 34 T.C. 58, Acq. withdrawn and Nonacq. substituted, 1974–1 C.B. 3.

70.9 Jurisdiction; notice of deficiency; last known address. Taxpayer, who did not file a return, was interviewed while in jail and furnished information that formed the basis for the assessment but did not give the interviewing officers a permanent or temporary address. Duplicate notices of deficiency were sent to the taxpayer at the addresses of an attorney representing a co-defendant and a bail bondsman. *Held,* the notices were not mailed to the taxpayer's "last known address," were insufficient and invalid, and did not serve to give the Court jurisdiction in the case. (Secs. 6212, 6213; '54 Code.)

Patrick Michael O'Brien, 62 T.C. 543, Acq., 1974–2 C.B. 3.

70.10 Jurisdiction; payment prior to deficiency notice. Decedent's estate tax return was filed in 1960 without payment and the tax plus interest was assessed. At the time of decedent's death a jeopardy assessment for individual income tax was outstanding against the legatee-executor, and pursuant to this assessment notices of levy were served third parties for property due him as beneficiary. The third parties transmitted cash and other assets to the District Director, each payment designated for application to the estate tax liability, totaling more than the estate tax and interest assessed. A deficiency notice for a greater estate tax than shown on the return was issued in 1963. *Held,* the estate tax liability had been paid at the time the notice of deficiency was issued and, accordingly, the Court was without jurisdiction. (Sec. 6211, '54 Code.)

Mary Hart Crawford, 46 T.C. 262, Acq., 1966–2 C.B. 4.

70.11 Jurisdiction; petition timely filed. Petitions received by the Tax Court 94 days after the date of the mailing of notices of deficiency in an envelope postmarked by a private postage meter stamp on the last day for filing were timely filed. (Sec. 7502, '54 Code.)

P. P. Leventis, Jr., 49 T.C. 353, Acq., 1969–1 C.B. 21.

70.12 Jurisdiction; petition timely filed; taxpayer abroad. The taxpayer was temporarily outside of the U.S. on a worldwide cruise on the day a notice of deficiency was mailed to her residence address in the U.S. The taxpayer filed a petition with the Tax Court more than 90 days but less than 150 days after the mailing of the notice of deficiency. *Held,* the petition was timely filed. (Sec. 6213, '54 Code.)

William Krueger, 33 T.C. 667, Acq., 1964–1 (Part 1) C.B. 4.

70.13 Petition; time for filing; Armed Forces; combat zone. The last date for the timely performance of the acts enumerated in section 7508, relating to an individual serving in a combat zone, is determined by adding to the time to be disregarded under section 7508 the time which remained for the performance of such acts at the time the individual entered the combat zone. (Secs. 6072, 7508; '54 Code.)

Rev. Rul. 76–425, 1976–2 C.B. 447.

70.14 Status and rules of practice. In accordance with the establishment of the United States Tax Court as a court of record under Article I of the Constitution of the United States, the rules of practice and other material under chapter II, parts 700, 701, and 702 of Title 26 of the Code of Federal Regulations are deleted. New Rules of Practice and Procedure issued in accordance with section 7453 of the Code are effective January 1, 1974.

1970–2 C.B. 644; Announcement 74–7, 1974–1 C.B. 504.

Transferees

(See: Liability for tax)

Waivers

(See: Extension of time)

ESTATE TAX

Abatements

(See: ADMINISTRATIVE: Refunds and credits)

Adjusted gross estate

(See: Marital deduction)

Administration

(See: ADMINISTRATIVE)

Administration expenses

102.1 Attorney's fees. In determining the net value of the assets of an inter vivos trust created by a decedent and included in his gross estate, an allowance should be made for attorney's fees incurred in connection with the trust accounting made necessary by the decedent's death. The fee is not deductible as an administration expense. §81.13. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 293, 1953–2 C.B. 257.

102.2 Attorney's fees. Attorney's fees were incurred in connection with contesting the inclusion in the decedent's gross estate of certain items of property not subject to claims. The contest involved proceedings in the Tax Court. The fees were paid 60 days after the Tax Court decision became final, but more than three years after the tax return was filed. Such attorney's fees constitute an allowable deduction. Clarified by Rev. Rul. 78–323. §20.2053–8. (Sec. 2053, '54 Code.)

Rev. Rul. 61–59, 1961–1 C.B. 418.

102.3 Attorney's fees. Attorney's fees and costs incurred in connection with the litigation, settlement, and collection of non-probate assets which are included in a decedent's gross estate but are not subject to claims are deductible as administration expenses. §20.2053–8. (Sec. 2053, '54 Code.)

Rev. Rul. 68–611, 1968–2 C.B. 410.

102.4 Attorney's fees. An overpayment of estate tax attributable to otherwise deductible attorney's fees paid after a Tax Court decision becomes final and more than three years after the filing of the estate tax return will not be refunded except to the extent that allowance of the attorney's fees as an additional deduction is reflected in the final decision of the Tax Court. Rev. Rul. 61–59 clarified. §§20.2053–8, 301.6215–1, 301.6501(a)–1, 301.6503(a)–1, 301.7805–1. (Secs. 2053, 6215, 6501, 6503, 7805; '54 Code.)

Rev. Rul. 78–323, 1978–2 C.B. 240.

102.5 Attorney's fees; contested wills. The executor of a will, who was also its chief beneficiary, incurred certain attorney's fees defending its validity in litigation and settling on appeal with the proponents of another will. *Held,* such expenses are deductible as administration expenses. (Sec. 2053, '54 Code.)

Christine Swayne, 43 T.C. 190, Acq., 1965–2 C.B. 6.

102.6 Attorneys' fees; ambiguous provision in will creating trusts. Attorneys' fees incurred on behalf of both the primary and contingent residuary beneficiaries of two testamentary trusts, reasonable in amount and allowed by the probate court for payment by the estate to the attorneys for each class of beneficiaries to clarify an ambiguous provision contained in the will as to the sizes of the respective trusts, are decuctible administration expenses.§20.2053–3. (Sec. 2053, '54 Code.)

Rev. Rul. 74–509, 1974–2 C.B. 302.

102.7 Attributable to earning tax-exempt income. The portion of any administration expenses attributable to the earning of tax-exempt income which is not deductible by a decedent's estate for income tax purposes is allowable as a deduction for estate tax purposes. Clarified to provide that the method of allocating indirect expense to exempt and nonexempt income set forth in Rev. Rul. 59–32 is not mandatory.§20.2053–3. (Sec. 2053, '54 Code.)

Rev. Rul. 59–32, 1959–1 C.B. 245; Rev. Rul. 63–27, 1963–1 C.B. 57.

102.8 Chargeable to wife's community interest. Where a wife, pursuant to an election provided in her deceased husband's will, relinquishes her one-half interest in community property in order to take under the will and allow its terms to govern the disposition of her community interest, a marital deduction is allowable to decedent's estate only to the extent that the property bequeathed to the wife exceeds in value property she is required to relinquish. No deduction is allowable to the estate for community debts and administration expenses properly chargeable to the wife's community interest, even though as a result of testamentary direction the executors are required to pay all community debts and administration expenses. §§81.47c, 20.2053–1, 20.2056(b)–4. (Sec. 812, '39 Code; Secs. 2053, 2056, '54 Code.)

Stapf, 375 U.S. 118, Ct. D. 1885, 1964–1 (Part 1) C.B. 533.

102.9 Community estate; surviving spouse. That portion of expenses paid or incurred in the administration of a community estate as are allowed by the laws of the jurisdiction under which the estate is being administered, which are not deductible by the estate of the decedent because paid or incurred in respect of the share of the community property belonging to the surviving spouse, may be deducted by the surviving spouse in her individual income tax return.§81.32. (Secs. 23(a), 812(b), '39 Code; Sec. 2051, '54 Code.)

Rev. Rul. 55–524, 1955–2 C.B. 535.

102.10 Community property state; Louisiana. Decedent was a member of a Louisiana marital community. His estate incurred expenses, the sole purpose of which was to facilitate the computation and payment of the State and Federal inheritance taxes for executor commissions, attorney fees, and miscellaneous administration expenses. *Held*, all of the administration expenses are deductible from decedent's estate and no part thereof should be charged to the half of the community owned by the surviving spouse. The expense was incurred on behalf of that portion of the community estate subject to decedent's disposition and the wife's distributable portion was unconcerned with such tax liability and derived no benefit from the services rendered or the expenses incurred. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Thomas E. Gannett, 24 T.C. 654, Acq., 1955–2 C.B. 6; William G. Helis, 26 T.C. 143, Acq., 1956–2 C.B. 6.

102.11 Community property state; Texas. Under Texas community law, only one-half of the administration expenses are generally deductible in determining the taxable estate of a decedent husband or wife. Expenses incurred solely in determining estate tax liability, however, are allowable in full to the decedent's estate. A deduction for only one-half of the amount of unpaid ad valorem taxes on decedent's separate property is allowable in all cases, except where it is judicially determined that the nonowner spouse has a right of equitable reimbursement for taxes already paid with his or her funds. A deduction of one-half of the funeral expenses incurred by the estate of the first community partner to die is allowable based on applicable law. Modified by Rev. Rul. 69–193 with respect to the deductibility of funeral expenses.§20.2053–1. (Sec. 2053, '54 Code.)

Rev. Rul. 66–21, 1966–1 C.B. 219.

102.12 Deducted from gross income of estate. Where an executor elects to deduct administration expenses from the gross income of the estate under section 23(a) of the 1939 Code, rather than from the gross estate under section 812(b), the 50 percent limitation for the marital deduction is determined by subtracting the aggregate amount of the deductions actually claimed and allowed under section 812(b) from the entire gross estate.§81.47(d). (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 55–225, 1955–1 C.B. 460.

102.13 Deducted from gross income of estate. Where one-half the value of the decedent's adjusted gross estate is bequeathed to the surviving spouse, and an election is made to deduct expenses of administration from the gross income of the estate rather than from the decedent's gross estate, the value of the adjusted gross estate is determined by subtracting from the gross estate only the deductions for estate tax purposes, and the value of the interest which actually passed to the surviving spouse should not be reduced by items which are allowed as deductions under section 2053 of the Code. (Sec. 2056, '54 Code.)

Rev. Rul. 55–643, 1955–2 C.B. 386.

102.14 Executor's commissions. Commissions computed and paid in accordance with Alabama law to the executor of the decedent's estate partly on income received and distributed after decedent's death were properly deductible from gross estate where the activities of the executor were directed toward the distribution of the assets, where the estate was not engaged in any trade or business, and where the period of administration was not unduly prolonged. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Debe W. Hubbard, 26 T.C. 183, Acq., 1957–2 C.B. 5.

102.15 Executor's commissions; attorney's fees. Where deductions for executor's commissions and attorney's fees are claimed on the estate tax return of the decedent as filed and some of the amounts have been paid, the estate is not precluded from deducting such amounts for income tax purposes provided, at the time the required statement and waiver are filed, such amounts have not been allowed as deductions for estate tax purposes, and provided the taxpayer is not currently claiming the same amounts on the estate tax return.§81.29. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Rev. Rul. 240, 1953–2 C.B. 79.

102.16 Executor's commissions; limited by local jurisdiction for computing inheritance tax. The executor for the estate, appointed prior to decedent's death, was directed to charge a 5 percent executor's commission. He filed an account in Pennsylvania Orphan's Court showing a credit of $135,387.09 for commissions. Prior to the filing, the State limited the deduction for executor's commission in computing State inheritance tax to $65,000. The Orphan's Court allowed a credit for the $135,387.09 shown in the executor's account. *Held*, the commission approved by the local court and actually paid is allowable as a deduction in computing the Federal estate tax. Further *held*, a $50,000 bequest to establish a trust for the perpetual care of the family burial lot in a church-owned cemetery, with trust income to be available to maintain and beautify the cemetery, is allowable partially as a funeral expense and partially as a transfer in trust for use of a religious corporation for religious purposes. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Elizabeth L. Audenried, 26 T.C. 120, Acq., 1956–2 C.B. 4.

102.17 Failure to file and pay penalties; interest. The failure to file and pay penalties are not deductible as administration expenses under section 2053 even if allowable under local law. The interest on a federal estate tax liability is a deductible administration expense to the extent allowable under local law regardless of the reason incurred. §§20.2053–3, 301.6601–1, 301.6651–1. (Secs. 2053, 6601, 6651; '54 Code.)

Rev. Rul. 81–154, 1981–1 C.B. 470.

102.18 Fees for legal services; executor-attorney. Attorney's fees paid to an executor-attorney, serving in a dual capacity, for legal services found to be extraordinary by court order are allowable as deduction from the gross estate of a Wisconsin decedent.§20.2053–3. (Sec. 2053, '54 Code.)

Rev. Rul. 69–551, 1969–2 C.B. 177.

102.19 Foreign country; rate of exchange. In computing the amount deductible under section 2053, the rate of exchange to be used in determining the U.S. dollar value of administration expenses incurred in a foreign country is the rate in effect on the date the payment is made. The rate to be used in determining the value of foreign claims against the estate is the rate in effect on the date of death (or alternate valuation date), provided the claim is properly valued at that date. If postdeath events must be considered in valuing the claim, the rate on the date of payment is used in determining the value of the claim. §20.2053–1. (Sec. 2053, '54 Code.)

Rev. Rul. 80–260, 1980–2 C.B. 277.

102.20 Interest. Interest paid by an estate on a loan used to pay Federal estate and State inheritance taxes to avoid having to sell non-liquid assets at "forced sale" prices is deductible as an administration expense where State law permits estates to borrow for such purposes. (Sec. 2053, '54 Code.)

James S. Todd, Jr., 57 T.C. 288, Acq., 1973–2 C.B. 4.

102.21 Interest; contested gift tax liability. Interest accruing on a contested gift tax liability after the death of a donor/decedent that is allowable as an administrative expense by a state probate court is a deductible administrative expense. (Sec. 2053, '54 Code.)

Jane deP. Webster, 65 T.C. 968, Acq. in result, 1977–2 C.B. 2.

102.22 Interest; estimated future payments. A deduction is not allowable for the estimated amount of interest that will accrue upon funds borrowed by an executor on behalf of an estate to pay the federal estate tax if repayment of the loan can be accelerated. §20.2053–1 (Sec. 2053, '54 Code.)

Rev. Rul. 84–75, 1984–1 C.B. 193.

102.23 Interest; federal estate tax deficiency. Interest on a federal estate tax deficiency is a deductible administrative expense under section 2053(a)(2) to the extent the expense is allowable under local law. §20.2053–3. (Sec. 2053, '54 Code.)

Rev. Rul. 79–252, 1979–2 C.B. 333.

102.24 Interest; foreign death taxes. Interest paid by the decedent's executor to a foreign taxing authority as a result of late payment of foreign death tax is a deductible administration expense under section 2053(a)(2) to the extent it is allowable under local law. §20.2053–3. (Sec. 2053, '54 Code.)

Rev. Rul. 83–24, 1983–1 C.B. 299.

102.25 Interest; installment payment of tax. Interest payable by an executor electing to pay estate tax in installments is deductible as administration expense. Rev. Rul. 75–239 revoked. §§20.2053–3, 20.6161–1, 20.6163–1. (Secs. 2053, 6161, 6166A, 6602; '54 Code.)

Rev. Rul. 78–125, 1978–1 C.B. 292; Charles A. Bahr, Sr., 68 T.C. 74, Acq., 1978–1 C.B. 1.

102.26 Interest; installment payment of tax. When no waivers were filed under section 642(g), all interest expenses actually incurred on the deferred payment of the federal estate tax are deductible under section 2053(a)(2), even though the interest expenses were claimed on the estate's income tax returns and the period of limitations on assessment of income tax has expired for those years. Under the doctrine of equitable recoupment, the amount of the estate tax overpayment is offset by the deficiencies and the interest on them resulting from the deduction of interest on income tax returns for the years for which the period of limitations on assessment of income tax has expired. §20.2053–3. (Secs. 642, 2053, 6166, 6166A, 6501; '54 Code.)

Rev. Rul. 81–287, 1981–2 C.B. 183.

102.27 Interest; installment payment of tax; when deductible. Interest charged on the extended payment of federal estate tax is deductible when the interest accrues. No deduction is allowable on the estate tax return for an estimate of interest expense to be incurred in the future. §20.2053–3. (Secs. 2053, 6161, 6163, 6166, 6166A; '54 Code.)

Rev. Rul. 80–250, 1980–2 C.B. 278.

102.28 Interest; obligation of decedent. Payments of interest accruing after a decedent's death attributable to an obligation incurred by the decedent are not deductible as administration expenses. §20.2053–1. (Sec. 2053, '54 Code.)

Rev. Rul. 77–461, 1977–2 C.B. 324; Jane deP. Webster, 65 T.C. 968, Nonacq., 1977–2 C.B. 2.

102.29 Interest; state death tax. Interest incurred on the deferral of state death taxes is deductible under section 2053 as an expense of administration. §20.2053–3. (Sec. 2053, '54 Code.)

Rev. Rul. 81–256, 1981–2 C.B. 183.

102.30 Litigation of purported will. The administrator of an estate paid certain fees and expenses incurred by the executor of a purported will in litigating its validity. The will was ultimately denied admission to probate. *Held,* the litigation expenses were essential to the proper settlement of the estate and were deductible as administration expenses. (Sec. 2053, '54 Code.)

Helen Dow Beck, 40 T.C. 238, Acq., 1964–1 (Part 1) C.B. 4.

102.31 Maintenance of decedent's household. Expenses authorized by a probate court for the operation and maintenance of a decedent's house for the benefit of surviving relatives do not constitute administration expenses. However, expenses directly connected with the preservation and sale of such property, such as wages during the period the executor is required to retain the property, may be properly classified as administration expenses which are deductible from the decedent's gross estate. (Sec. 2053, '54 Code.)

Rev. Rul. 56–604, 1956–2 C.B. 601.

102.32 Maintenance of decedent's livestock. Unsold livestock and crops of a deceased cash method farmer constitute items of property or inventory and not rights to, or items of, income in respect of a decedent. The appreciation in the value of the cattle during the alternate valuation period is not property earned or accrued and no part thereof is "excluded property," but is includible in the gross estate at the fair market value on the applicable valuation date. Any feed used in caring for the cattle constitute deductible administration expenses. §20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 58–436, 1958–2 C.B. 366.

102.33 Net income and net estate deduction. An estate may deduct administration expenses in the year paid on its income tax return under section 212 of the Code without forfeiting its right to deduct similar payments in another year to determine its net estate under section 2053 provided the statement and waiver required by section 642(g) are filed. I.T. 4048 superseded. §20.2053–1. (Secs. 212, 642, 2053; '54 Code.)

Rev. Rul. 70–361, 1970–2 C.B. 133.

102.34 Nonlocal personal representative; travel; state law. A claim for travel expenses allowed in addition to the normal commission by a county court to a nonlocal personal representative, who did not have the special expertise or other special qualification that would aid in the administration of the decedent's estate as required under state law for allowance of the claim, is not allowable as an administration expense. §20.2053–3. (Sec. 2053, '54 Code.)

Rev. Rul. 77–443, 1977–2 C.B. 327.

102.35 Post-death interest on tax deficiencies. Post-death interest on Federal and State income tax deficiencies incurred while an executor of a decedent's estate was contesting imposition of the taxes is deductible as administration expense to the extent allowable under local law. §20.2053–3. (Sec. 2053, '54 Code.)

Rev. Rul. 69–402, 1969–2 C.B. 176.

102.36 Post-mortem rent. The payment of two months post-mortem rent on decedent's apartment, the lease on which required two months notice for termination and which was occupied during and subsequent to the two month period by decedent's sister, was a deductible expense of administration. (Sec. 2053, '54 Code.)

Harry Britenstool, 46 T.C. 711, Acq., 1978–2 C.B. 1.

102.37 Stock redemption to pay death taxes. In a redemption of stock to pay death taxes, the amount of funeral and administration expenses referred to in section 303 of the 1954 Code includes those expenses paid by an estate prior to the enactment of the 1954 Code, provided such expenses are otherwise deductible under section 2053. It is not material whether such allowable expenses were deducted on income or estate tax returns filed under the 1939 Code. (Secs. 303, 642, 2053; '54 Code.)

Rev Rul. 56–449, 1956–2 C.B. 180.

102.38 Trustees' fees. The Tax Court held that the trustees' fees, incurred in winding up decedent's affairs, were deductible in part for estate tax purposes, even though they were also deductible from the income of the trust. (Secs. 212, 642, 2053; '54 Code.)

Mary E. Burrow, 39 T.C. 1080, Acq., 1965–2 C.B. 5.

102.39 Trustees; commissions. Statutory commissions and expenses paid by the estate of a decedent to the trustees of the decedents grantor trust, consisting of income producing assets and certain real property not held for the production of income, are deductible for income tax and estate tax purposes to the extent that they are attributable to the income producing assets and represent a fee for services rendered through the date of the decedent's death. The statutory commissions and expenses allocable to services performed after the decedent's death, attributable to both the income producing assets and the real property, are deductible as administration expenses for estate tax purposes but are not deductible for income tax purposes. §§20.2053–1, 20.2053–8. (Secs. 212, 642, 691, 2053; '54 Code.)

Rev. Rul. 76–498, 1976–2 C.B. 199.

102.40 Underwriting fees incurred in marketing stock. Underwriting fees that are incurred in marketing a large block of stock are not considered in determining blockage discount to be accorded in valuing the stock under section 2031, but are deductible as an administration expense under section 2053(a)(2). §§20.2031–2, 20.2053–3. (Secs. 2031, 2053; '54 Code.)

Rev. Rul. 83–30, 1983–1 C.B. 224.

102.41 Valuation of residuary interest. Where the transferor bequeaths an interest in his residuary estate, the value of the property transferred for purposes of section 2013 is computed on the net value of the residuary estate after deducting all of the administration expenses whether taken as deductions under section 2053 for Federal estate tax purposes or under sections 162 or 212 of the Code for income tax purposes. §20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 66–233, 1966–2 C.B. 428.

102.42 Valuation of residuary interest; marital deduction; South Carolina. A South Carolina decedent's will directed, without apportionment, that debts and administration expenses be paid promptly and, after providing for specific and general bequests, the will gave one-third of the residue to the surviving spouse. The value of the property interests passing to the surviving spouse under the residuary clause is not charged with any such debts or expenses in computing the marital deduction under section 2056(a). §20.2056(b)–4. (Sec. 2056, '54 Code.)

Rev. Rul. 78–419, 1978–2 C.B. 236.

102.43 Widow's attorney's fees; determination by the state court. In litigation relating to the ownership of certain property transferred to the decedent's widow by the decedent prior to his death, the state court approved a compromise agreement which required that the estate pay the widow's attorney's fees. *Held,* the attorney's fees may be deducted as: (1) administration expenses under section 2053, as being essential to proper settlement of the estate under reg 20.2053–3(c)(3); (2) part of the cost of the executor's discharging his responsibility for collection of assets under reg. 20.2053–3 or; (3) as a settlement of a claim against the estate under section 2053. (Sec. 2053, '54 Code.)

Peter W. Reilly, 76 T.C. 369, Acq., 1981–2 C.B. 2.

Administrators and executors

104.1 Administrative powers; conferred on fiduciary; marital deduction. Examples are provided to illustrate the principle that directions to, or powers conferred upon, an executor or trustee under a will or inter vivos trust instrument or by local law (as aids in managing trusts) do not result in the disallowance or diminution of the marital deduction under sections 2056 and 2523 of the Code.§§ 20.2056(b)–5, 25.2523(e)–1. (Secs. 2056, 2523; '54 Code.)

Rev. Rul. 69–56, 1969–1 C.B. 224.

104.2 Administrative powers; marital deduction. An interest passing in trust may qualify for the marital deduction despite provisions granting to the trustees administrative powers, including the power to determine the allocation of receipts and disbursements between income and corpus, if the local law applicable to the administration of the trust places reasonable limitations on the exercise of such powers.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 66–39, 1966–1 C.B. 223.

104.3 Discharge of personal liability. Where an executor of a decedent's estate has been duly appointed and acting as such, the trustees of an inter vivos trust created by the decedent, the assets of which were included in his gross estate, are not entitled to a certificate of discharge from personal liability. (Sec. 2204, '54 Code.)

Rev. Rul. 57–424, 1957–2 C.B. 623.

104.4 Discharge of personal liability; court appointment of successor. A deceased's personal representative under the will, who did not file an application for discharge from personal liability, will not be discharged from personal liability in the event of default in installment payments of estate tax by a successor representative appointed by court order. §20.2204–1. (Sec. 2204, '54 Code.)

Rev. Rul. 76–114, 1976–1 C.B. 290.

104.5 Discharge of personal liability; Form L–118. The legal representative of an estate may use Form L–118, together with proof of payment, to establish that his personal liability for the estate tax has been satisfied.§20.2204–1. (Sec. 601.104, S.P.R.; Sec. 2204, '54 Code.)

Rev. Proc. 70–10, 1970–1 C.B. 437.

104.6 Fees for legal services; executor-attorney. Attorney's fees paid to an executor-attorney, serving in a dual capacity, for legal services found to be extraordinary by court order are allowable as deduction from the gross estate of a Wisconsin decedent.§20.2053–3. (Sec. 2053, '54 Code.)

Rev. Rul. 69–551, 1969–2 C.B. 177.

104.7 Personal liability for decedent's unpaid tax. Where an executor or administrator has neither personal knowledge of an unpaid income tax liability of decedent nor such knowledge as would put a reasonably prudent man on inquiry, he cannot be held personally liable for the tax payment under section 3467 of the Revised Statutes.§§301.6501(d)–1, 301.6901–1. (Secs. 6501, 6901; '54 Code.)

Rev. Rul. 66–43, 1966–1 C.B. 291.

104.8 Personal liability for decedent's unpaid tax. A decedent's unpaid federal income tax and related interest and penalties exceeded the value of the assets of the estate. The executor was chargeable with knowledge of these liabilities, but exhausted the estate by paying state income taxes and debts to general creditors and making mortgage payments on the decedent's residence in which the decedent's interest was extinguished at death by operation of state law. The executor is personally liable under section 3467 of the Revised Statutes, and this liability may be assessed under section 6901 of the Code. §301.6901–1. (Sec. 6901, '54 Code.)

Rev. Rul. 79–310, 1979–2 C.B. 404.

104.9 Request for prompt assessment. A written request for prompt assessment of tax by an executor, or other fiduciary representing the estate of a decedent, or by a corporation contemplating dissolution, must be a separate document filed after the return in question has been filed and it must be transmitted to the District Director in an envelope separately from any other document.§301.6501(d)–1. (Sec. 6501, '54 Code.)

Rev. Rul. 57–319, 1957–2 C.B. 855.

104.10 Request for prompt determination of tax liability by attorney. A request for prompt determination of estate tax liability and discharge of an executor from personal liability under the provisions of section 2204 of the Code, may be made by an attorney duly authorized by the executor, through a properly executed Form 2848, General Power of Attorney, or Form 2848–A, Limited Power of Attorney, to act in all matters relating to the estate tax liability.§20.2204–1. (Sec. 2204, '54 Code.)

Rev. Rul. 65–186, 1965–2 C.B. 380.

Aliens

(See: Nonresidents; Residents)

Alternate valuation

(See: Valuation)

Annuities

106.1 Amount payable in lump sum or installments; discretion of trustees. Decedent had been a participant in his employer's non-contributory, profit-sharing plan until his retirement and thereafter an inactive participant to date of death. The plan provided that benefits were payable at the discretion of the trustees in a lump sum or in installments during a period not exceeding 180 months. Decedent, upon his retirement, requested but was denied a lump-sum payment of his interest. Instead, he was permitted, as an inactive participant, to have his account segregated and to recommend investments at his own risk. The trustees made no distributions to decedent prior to his death. *Held*, the fund was at all times subject to the trustees' discretionary power; the decedent did not constructively receive a portion of his interest therein prior to his death; and no portion thereof was includible in his gross estate. (Sec. 2039, '54 Code.)

Harold S. Brooks, 50 T.C. 585, Acq., 1969–1 C.B. 20.

106.2 Amount subject to withdrawal from employer's plan; sole shareholder-president. The interest of a corporation's deceased president and sole shareholder under a qualified noncontributory pension plan that could be terminated by the corporation at any time was not constructively received prior to death and the exclusion allowable under section 2039(c) is applicable to the value of the annuity payable to the decedent's spouse under the plan.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 77–139, 1977–1 C.B. 278.

106.3 Amount subject to withdrawal from profit-sharing plan. Where an employee died in his eighteenth year of participation in a qualified employees' profit-sharing plan without having exercised his right to withdraw, during such year, one-third of the amount credited to his account on the preceding December 31, he had an interest in such property as of January 1 of the eighteenth year even though certain administrative computations were necessary to determine the exact amount to which he was entitled, and the exclusion provided by section 2039(c) of the Code is not applicable to that portion of his account.§§20.2033–1, 20.2039–2. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 67–37, 1967–1 C.B. 271.

106.4 Amount subject to withdrawal from profit-sharing plan; substantial limitation. Employer contributions credited to the account of a decedent under a qualified employees' profit-sharing plan that allows withdrawals by participants, subject to a 12-month suspension from plan participation, of all employee contributions at any time and a limited amount of employer contributions after six years of service, were not constructively received by the participant while employed, and the value of the amount received as an annuity by the designated beneficiary that is attributable to the contributions of the employer is excludable from the gross estate.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 77–34, 1977–1 C.B. 276.

106.5 Annual election to participate in qualified plan. Where an employee must make an annual election to participate in a qualified profit-sharing and savings plan whereby all or one-half of his share of the company's annual contributions are transferred to a trust fund and credited to his account, or, upon his failure to so elect, a distribution equivalent to such share is to be made directly to the employee, the contribution is considered to be a payment made by the employer and not by the employee for the purpose of the exclusion provided under section 2039(c) of the Code.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 68–89, 1968–1 C.B. 402.

106.6 Civil service; community property state. State community property laws do not apply to annuities, death benefits, or refunds payable under the Civil Service Retirement Act. The full value of retirement contributions, plus the accrued interest thereon, is includible in the gross estate of a Federal civil service employee. Distinguished by Rev. Rul. 63–168. (Sec. 2039, '54 Code.)

Rev. Rul. 57–446, 1957–2 C.B. 619.

106.7 Civil service; employee dying before retirement. Where an individual covered under the Civil Service Retirement System dies before retirement, the amount includible in his gross estate on account of an annuity payable to his beneficiaries is the amount of his contribution to the system, plus the interest accrued thereon. (Sec. 2039, '54 Code.)

Rev. Rul. 56–1, 1956–1 C.B. 444.

106.8 Civil service; employee dying before retirement. A divorce court that has the power to decree a settlement of all marital rights ordered that if a federal employee died prior to retirement, the lump-sum refund of the employee's contribution to the U.S. Civil Service Retirement System, plus any interest accrued thereon, would be payable to the employee's former spouse. The employee died prior to retirement. The refund is includible in the employee's gross estate under section 2039 and is deductible under section 2053(a)(4). §§20.2039–2, 20.2053–7. (Secs. 2039, 2053; '54 Code.)

Rev. Rul. 80–81, 1980–1 C.B. 203.

106.9 Civil service; marital deduction. The value of the survivor's annuity under the Civil Service Retirement System is not allowable as a marital deduction, to the extent included in the decedent's gross estate, if upon the date of the decedent's death any portion of his contributions plus interest accrued thereon is payable to anyone other than the surviving spouse or her estate in the event of her death or remarriage. On the other hand, the marital deduction would be allowable if the decedent designated his widow or her estate as the beneficiary of any unrecovered contributions. Moreover, if the decedent's contributions had been recovered by the date of death, the value of the survivor's annuity, to the extent included in the decedent's gross estate, would be allowable as a marital deduction.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 64–310, 1964–2 C.B. 342.

106.10 Civil service; surviving children; valuation. Actuarial tables are set forth to determine the present value of temporary annuities payable under the Civil Service Retirement System to eligible children of deceased employees based on 3½ percent interest for purposes of computing the amount excludable from gross estate with respect to estates of decedents dying on or before December 31, 1970, and 6 percent with respect to decedents dying after that date. §§20.2031–7, 20.2031–10, 20.2039–2. (Secs. 2031, 2039; '54 Code.)

Rev. Proc. 71–6, 1971–1 C.B. 664; Rev. Proc. 71–7, 1971–1 C.B. 671.

106.11 Civil Service survivorship. An annuity receivable under the U.S. Civil Service Retirement Act by the surviving spouse of an employee who entered Government service in 1925 is receivable under a contract or agreement entered into after March 3, 1931, for purposes of section 2039(a).§20.2039–1. (Sec. 2039, '54 Code.)

Rev. Rul. 77–95, 1977–1 C.B. 274.

106.12 Civil service survivorship. An example shows the computation of the amount of an annuity includible in the gross estate of a Federal employee who elected to provide a survivor annuity for his wife and receive a reduced annuity upon his retirement after 1951 and before 1971 and who died after 1970.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 74–557, 1974–2 C.B. 301.

106.13 Civil service survivorship; valuation. Where a decedent-employee's estate is valued under the alternate method, a cost-of-living adjustment of the benefits payable under a Civil service annuity made within the one-year period must be taken into account in determining the value of the survivorship annuity. The value of the annuity is to be computed by multiplying the surviving spouse's life expectancy at the decedent's death by the adjusted benefits payable. The amount of the annuity included in the decedent's estate is determined under section 2039 of the Code.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 69–341, 1969–1 C.B. 218.

106.14 Civil service; survivorship's interest. Where a Federal civil service employee elects at the time of his retirement to apply voluntary contributions to the purchase of a reduced life annuity for himself and after his death one-half thereof to his beneficiary, the value of the survivorship annuity passing to his beneficiary at his death prior to January 1, 1954, is includible in his gross estate.§81.17. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 55–682, 1955–2 C.B. 601.

106.15 Community property; interest in profit-sharing plan. Where the vested interest of a surviving spouse in a plan which meets the requirements of section 401(a) was community property, the value of the predeceased wife's community property interest therein is includible in gross estate under section 2033 and that interest is not subject to exclusion under section 2039(c) of the Code.§§20 2033–1, 20.2039–2. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 67–278, 1967–2 C.B. 323.

106.16 Death benefits; monthly installments. An employer's plan provided both for a pension to a retired employee and for a mandatory death benefit payable to a deceased retiree's beneficiary. Decedent died after more than three full years of retirement and under the plan the surviving spouse, a qualified beneficiary, received the maximum death benefit payable, as by decedent, in equal monthly installments over 120 months. *Held,* the death benefit payable under the employer's plan was a "contract or agreement" under section 2039 of the Code and the value of the payments includible in the decedent's gross estate was the commuted value of the monthly installment payments over a period of 120 months and not the full amount of the mandatory death benefit. (Sec. 2039, '54 Code.)

Henry C. Beal, 47 T.C. 269, Acq., 1967–2 C.B. 1.

106.17 Death benefits; Public Safety Officers' Benefit Act. A death benefit paid under section 701(a) of the Public Safety Officers' Benefit Act to the survivor of a decedent who had been employed as a public safety officer is not includible in the decedent's gross estate. §§20.2033–1, 20.2039–1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 79–397, 1979–2 C.B. 322.

106.18 Death benefits; return of employee contributions plus interest. Decedent was a beneficiary under two annuity contracts purchased through contributions by decedent and by two former employers pursuant to plans which qualified under section 401(a) of the Code. Decedent had the right to terminate such contracts and have returned to him his contributions at any time prior to the annuity date. Benefits payable under the two contracts if death came before the annuity date consisted only of a refund of the employee's contributions with interest. Decedent died prior to the annuity date. *Held,* section 2039(c) operated exclusively of all other provisions of the Code to determine the portion of the death benefits includible in decedent's gross estate. (Sec. 2039, '54 Code.)

Raymond W. Albright, 42 T.C. 643, Nonacq., 1966–2 C.B. 7.

106.19 Discretionary "wage dividend" and "salary" death benefits. "Wage dividend" and "salary" death benefits paid by an employer, as a part of a discretionary practice not under any contract or aggreement, to a decedent's wife were not includible in the gross estate under code sections 2033 or 2039. Under section 2033 decedents had only an expectancy with respect to the benefits and under section 2039 no contract or agreement existed. Acq. as to the issue under section 2033; Acq. in result as to the issue under section 2039. (Secs. 2033, 2039; '54 code.)

William E. Barr, 40 T.C. 227, Acq. and Acq. in result, 1978–1 C.B. 1.

106.20 Discretionary wage dividend death benefit. An employer instituted a discretionary practice of paying a year-end wage dividend to its employees. No contract or agreement existed relating to the wage dividend. Decedent-employee died before the end of the fiscal year. *Held,* the wage dividend death benefit paid to decedent's widow pursuant to discretionary action of the employer is not includible in decedent's gross estate. (Secs. 2033, 2039; '54 Code.)

William E. Barr, 40 T.C. 227, Acq., 1964–1 (Part 1) C.B. 4.

106.21 Joint and survivorship; life insurance policy. Where a decedent purchased a single premium joint life and survivorship annuity contract from an insurance company subsequent to March 3, 1931, the value of the survivor's annuity or, if the survivor annuitant predeceased the decedent, the present worth of refund payments due under the contract is includible in the decedent's gross estate.§81.18. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 55–302, 1955–1 C.B. 446.

106.22 Judicial Retirement System of Texas. One-half the value of a survivorship annuity receivable under the Judicial Retirement System of Texas is includible in a decedent's gross estate as paid under contract. §20.2039–1. (Sec. 2039, '54 Code.)

Rev. Rul. 75–505, 1975–2 C.B. 364.

106.23 Judicial Survivor's Annuity System. The amount includible in the gross estate of a Federal judge because of an annuity payable to his surviving wife under the Judicial Survivor's Annuity System is the amount of the decendent's contribution to the system and interest accrued thereon.§20.2039–1. (Sec. 2039, '54 Code.)

Rev. Rul. 71–481, 1971–2 C.B. 230.

106.24 Life insurance proceeds received under qualified plan. Amounts receivable by beneficiaries under a qualified noncontributory profit-sharing plan which represent the proceeds of insurance policies on the life of a decedent, otherwise includible under section 2042, are excludable from the decedent's gross estate by reason of section 2039(c) of the Code.§§20.2039–2, 20.2042–1. (Secs. 2039, 2042; '54 Code.)

Rev. Rul. 67–371, 1967–2 C.B. 329.

106.25 Life insurance proceeds; lump sum distribution under qualified employees' plan. Lump sum pre-retirement benefits payable under a qualified employees' plan and consisting of the proceeds of an ordinary life insurance policy are includible in the decedent's gross estate if the beneficiary elects 10-year income averaging with respect to the taxable portion of the proceeds. Where the benefits consist of the proceeds of group term insurance, the entire amount is excludible. Rev. Rul. 67–371 amplified. §§20.2039–2, 20.2042–1. (Secs. 2039, 2042; '54 Code.)

Rev. Rul. 82–199, 1982–2 C.B. 211.

106.26 Lump sum payment under qualified plan. The apportionment formula provided by section 2039(c) of the Code is not required in order to determine the amount includible in a decedent's gross estate by reason of a lump-sum payment to a beneficiary under a qualified employees' profit-sharing plan if the contributions of the decendent and the increments thereon were, under the provisions of the plan, continuously segregated into a separate account and at all times precisely determinable.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 68–556, 1968–2 C.B. 408.

106.27 Marital deduction; terminable interest of surviving spouse. No marital deduction is allowable for the value of annuity payments to the surviving spouse of a deceased employee, who is also survived by a dependent child, from a city's nonqualified pension plan that provides that upon the death or prior remarriage of the spouse the annuity payments will be apportioned equally among the dependent children. However, the deduction is allowable if there are no dependent children at the time of the decedent's death. §20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 76–404, 1976–2 C.B. 294.

106.28 Marital deduction; terminable interest of surviving spouse. A survivor's annuity payable to a decedent's spouse by the decedent's wholly owned corporation, the stock in which was bequeathed in equal shares to the surviving children is not a "terminable interest" and qualifies for the marital deduction.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 77–404, 1977–2 C.B. 333.

106.29 Marital deduction; terminable interest of surviving spouse. A decedent, who was the grantor and life income beneficiary of a trust, made an agreement with the remainder beneficiary to terminate the succeeding life estate of the decedent's spouse in exchange for the remainder beneficiary's promise to pay an amount equal to the present value of the spouse's life estate, in 30 annual installments, to any person designated by the decedent. The decedent bequeathed the installments to the spouse with any balance remaining upon the spouse's death to be paid to the spouse's estate. The spouse's right to the payments qualifies for the marital deduction. §20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 79–420, 1979–2 C.B. 335.

106.30 Partnership; surviving spouse successor in interest. The value of payments receivable by a surviving spouse as successor to her decedent husband's right to receive a share of partnership income for a specified period of time as a retirement benefit is includible in the decedent's gross estate.§20.2039–1. (Sec. 2039, '54 Code.)

Rev. Rul. 71–507, 1971–2 C.B. 331.

106.31 Payment of benefits by insurer. Payments of benefits, made under an exempt employees' trust, directly by the insurer issuing the group annuity contract, under which the benefits are funded, shall be treated in the same manner in respect to sections 402(a)(2), 101(b), and 2039(c)(1) of the Code by the beneficiary as if they had been distributed by the trust.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 59–401, 1959–2 C.B. 121.

106.32 Pension agreement. Decedent entered into a pension agreement with his employer which provided that in the event of decedent's death prior to retirement, proceeds of insurance and annuity contracts funding the agreement would be paid decedent's wife until death or remarriage, at which time remaining payments would be made to the employer. When decedent died, the wife elected a settlement option providing a specified monthly income for life with ten years certain. *Held*, the value of the annuity benefits includible in decedent's gross estate was the cost of providing decedent's wife with specified income for life, and the interest of the employer in "remaining payments" did not qualify as payments receivable by a "beneficiary." (Sec. 2039, '54 Code.)

Wilmar Mason Allen, 39 T.C. 817, Acq., 1964–1 (Part 1) C.B. 4.

106.33 Post-death additions to deferred compensation account. Decedent was a participant in his employer's deferred compensation plan until the time of his death. Under the plan, an employee must be alive and on the payroll at the end of the year in order to be eligible to participate. Ten months after death, the employer credited decedent's account with additional deferred compensation. *Held*, under the terms of the plan and the rules of participation, the decedent was not entitled to an allotment under the plan and his representative had no enforceable right thereto as a result of his death; accordingly, the value of the addition was not includible in decedent's gross estate. (Sec. 2039, '54 Code.)

Raymond W. Albright, 42 T.C. 643, Acq., 1966–2 C.B. 4.

106.34 Post-employment benefits received by widow. Decedent's contract of employment provided for a salary payable to him and monthly payments to his widow for her life if he died during the term of the contract. Neither decedent nor anyone other than the widow at any time received or was entitled to receive any post-employment benefits. *Held*, the salary payments under the contract did not constitute "an annuity or other payment," and the value of the payments to the widow was not includible in the decedent's gross estate. (Sec. 2039, '54 Code.)

Firmin D. Fusz, 46 T.C. 214, Acq., 1967–2 C.B. 2.

106.35 Professional service corporation's retirement plan. The value of a survivorship annuity receivable under the qualified retirement plan of a professional service corporation by the spouse of a decedent who had been an employee and stockholder of the corporation is excludable from the decedent's gross estate under section 2039(c) to the extent attributable to employer contributions.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 77–96, 1977–1 C.B. 277.

106.36 Profit-sharing plan; guaranteed payments received by designated beneficiary. The provisions of an annuity with a guaranteed period of payments that was purchased by the trustee of a noncontributory qualified profit-sharing plan gave the annuitant the right to receive the commuted value of the guaranteed payments, which would have been less than the amount required to purchase an annuity of comparable value. The value of the guaranteed payments received by the designated beneficiary had not been constructively received by the decedent and were excludable from the decedent's gross estate. §20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 80–158, 1980–1 C.B. 196.

106.37 Profit-sharing plan; trust beneficiary. Payments received under a qualified employees' noncontributory profit-sharing plan by the trustee of a testamentary trust who was prohibited under the will from using the payments for the benefit of the estate, such prohibition not being invalid under state law, are excludable from decedent's gross estate. The result would be the same as to trusts containing the same prohibition.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 73–404, 1973–2 C.B. 319.

106.38 Profit-sharing plan; trust beneficiary. The exclusion from a decedent's gross estate applies to benefits under a "qualified" profit sharing plan, contributions to which are made solely by the employer corporation, paid as designated by decedent's will to a trustee who is empowered, but not required either by the will or the circumstances, to use trust funds to help pay the estate's obligations, and paid in a state whose laws exempt such benefits from liability for estate expenses and debts to the same extent they would be exempt if paid to an individual beneficiary.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 77–157, 1977–1 C.B. 279.

106.39 Right to annuity income. The commuted value of a right to receive annuity income, pursuant to an employer-employee agreement made prior to October 8, 1949, providing for the retirement of the employee and, upon his death, payment to designated beneficiaries, is includible in decedent's gross estate. The value of such right is also includible in gross estate where the decedent possessed at his death the power to modify the contract.§§81.17, 81.20. (Sec. 811, '39 Code; Secs. 2035, 2038, '54 Code.)

Rev. Rul. 260, 1953–2 C.B. 262.

106.40 Self-employment plan. No portion of an annuity attributable to contributions made on behalf of a self-employed individual may be excluded from gross estate under section 2039(c) or from the total amount of gifts under section 2517 of the Code.§§20.2039–2, 25.2517–1. (Secs. 2039, 2517; '54 Code.)

Rev. Rul. 74–119, 1974–1 C.B. 276.

106.41 Servicemen; election of survivor benefits. The value of an annuity payable to the widow or other survivors of a member of the uniformed services who elected a survivorship annuity under the Uniformed Services Contingency Option Act of 1953 is includible in his gross estate.§81.17. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 54–144, 1954–1 C.B. 15.

106.42 Servicemen; election of survivor benefits. The entire value of annuities payable to the survivors of a retired member of the uniformed services, where such member elected to receive a reduced "retirement pay" in order to provide annuities payable after his death to his widow and children under the Uniformed Services Contingency Option Act, is includible in his gross estate. Modified by Rev. Rul. 72–332.§20.2039–1. (Sec. 2039, '54 Code.)

Rev. Rul. 59–254, 1959–2 C.B. 33.

106.43 Servicemen; election of survivor benefits. The entire value of a survivor annuity payable under the Retired Serviceman's Family Protection Plan, the cost of which was borne by the decedent through the reduction of his retirement annuity, is not includible in his gross estate. Rev. Rul. 59–254 is modified to limit its application to estates of decedents dying before 1966. Modified by Rev. Rul. 75–176.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 72–332, 1972–2 C.B. 527.

106.44 Servicemen; election of survivor benefits. The value of a survivor annuity payable to a retired serviceman's widow under the Survivor Benefit Plan, provided for solely by the serviceman's decision to receive a reduced annuity, is not includible in his gross estate. Rev. Rul. 72–332 modified. §20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 75–176, 1975–1 C.B. 300.

106.45 Survivorship. The exercise of an option by a decedent under a pension plan to take a reduced annuity for himself and provide a survivorship annuity for his wife does not constitute a transfer of property includible in the gross estate where the election was made prior to October 8, 1949. However, where such election was made after October 7, 1949, the value of the survivorship annuity is includible as a transfer taking effect at death as an exercise of a general power of appointment.§§81.17, 81.18, 81.24. (Sec. 811, '39 Code; Secs. 2035, 2041, '54 Code.)

Rev. Rul. 158, 1953–2 C.B. 259.

106.46 Survivorship; benefits under two different employee's plans. The benefits accruing to a decedent while an active employee under an employer's sickness and accident income plan cannot be considered together with the benefits accruing under the same employer's survivor's income benefit plan for purposes of determining the includibility of the value of the survivor's benefits in the decedent's gross estate.§20.2039–1. (Sec. 2039, '54 Code.)

Rev. Rul. 77–183, 1977–1 C.B. 274.

106.47 Survivorship; coupled with qualified retirement plan. Benefits accruing under a qualified employee's retirement plan cannot be considered together with the benefits accruing under a nonqualified survivor's income benefit plan for purposes of determining the includibility of the value of the survivor's benefits in a decedent's gross estate. §20.2039–1. (Sec. 2039, '54 Code.)

Rev. Rul. 76–380, 1976–2 C.B. 270.

106.48 Survivorship; employee contributions refunded at retirement. A survivor's annuity payable to the spouse of a decedent who had contributed to a qualified pension plan with separately maintained and segregated accounts for employer and employee contributions and who had elected at retirement to receive a lump sum refund of the employee contributions with accrued interest is solely attributable to employer contributions and is excluded from the decedent's gross estate.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 78–151, 1978–1 C.B. 291.

106.49 Survivorship; employer contributions to state retirement system. A state university made contributions on behalf of a decedent, a professor at the university, to a state retirement system that is not a qualified plan under section 401(a). The contributions obligated the custodian of the system to provide an annuity to the decedent on retirement and were purchases of retirement annuity contracts for purposes of section 2039(c)(3). §20.2039–2 (Sec. 2039, '54 Code.)

Rev. Rul. 79–301, 1979–2 C.B. 327.

106.50 Survivorship; Germany. The value of a survivor annuity payable to a decedent's surviving spouse by the Federal Republic of Germany under the Law on Indemnification for National Socialist Injustices for Members of the Civil Service Living Abroad is not includible in the gross estate of the decedent. §§20.2033-1, 20.2039-1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 79-35, 1979-1 C.B. 294.

106.51 Survivorship; individual retirement accounts. The present value of the amount payable to the surviving spouse under an individual retirement account, funded by a rollover contribution described in section 402(a)(5) and paying an annuity as defined in section 2039(e), is not includible in the gross estate of the deceased spouse who died after December 31, 1976.§20.2039-2. (Secs. 402, 2039; '54 Code.)

Rev. Rul. 77-222, 1977-1 C.B. 281.

106.52 Survivorship; Mine Safety Act. The value of the annuity payable under title IV of the Federal Coal Mine Health and Safety Act of 1969 to the surviving spouse of a coal miner who died due to black lung disease is not includible in the decedent's gross estate. §§20.2033-1, 20.2039-1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 76-102, 1976-1 C.B. 272.

106.53 Survivorship; qualified noncontributory retirement plan; survivor's power of appointment. The present value of guaranteed survivor annuity payments remaining payable at the survivor's death under a qualified noncontributory retirement plan under which the survivor has the unrestricted power to select the beneficiary of the remaining payments is includible in the survivor's gross estate under section 2041(a)(2). The exclusion provisions of section 2039(c) do not apply. §§20.2039-2, 20.2041-1. (Secs. 2039, 2041; '54 Code.)

Rev. Rul. 79-190, 1979-1 C.B. 299.

106.54 Survivorship; qualified retirement plans; annuity options. The value of the survivor's benefit under a qualified retirement plan that entitled the survivor to choose between annuity options is based on the annuity option that has the highest present value on the applicable valuation dates for purposes of applying the formula contained in reg. 20.2039-2(c)(2). The computation of the amount includible in the gross estate is illustrated. §20.2039-2. (Sec. 2039, '54 Code.)

Rev. Rul. 78-282, 1978-2 C.B. 235.

106.55 Survivorship; Railroad Retirement Act. An annuity, or other payment specified in subsection (a), (b), (c), (d), or (f)(1) of section 5 of the Railroad Retirement Act of 1937, as amended, is not includible in the gross estate of a deceased railroad employee. However, the value of payments under section 5(f)(2) of the Act, in which the decedent may designate the beneficiary, is includible. Modified to provide that lump sum benefits payable under section 5(f)(2) of the act to surviving spouse or parent under age 60 is not includible in a decedent's gross estate. §§20.2033-1, 20.2039-1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 60-70, 1960-1 C.B. 372; Rev. Rul. 73-316, 1973-2 C.B. 318.

106.56 Survivorship; Social Security; monthly benefits. The value of monthly benefits payable to a decedent's spouse under section 402(e) of the Social Security Act is not includible in the decedent's gross estate under section 2033 or 2039. §§20.2033-1, 20.2039-1. (Sec. 2033, 2039; '54 Code.)

Rev. Rul. 81-182, 1981-2 C.B. 179.

106.57 Survivorship; veteran. The value of an annuity payable as "Veterans' Benefits" to the surviving spouse of a deceased veteran is not includible in the veteran's gross estate under section 2033 or section 2039. §§20.2033-1, 20.2039-1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 76-501, 1976-2 C.B. 267.

106.58 Teacher's beneficiary. The exclusions provided by sections 2039 and 2517 of the Code do not apply to amounts received by the beneficiary of a public school teacher pursuant to an annuity contract purchased under section 403(b) by a school that is an integral part of a state or local government. §§20.2039-2, 25.2517-1. (Secs. 2039, 2517; '54 Code.)

Rev. Rul. 68-294, 1968-1 C.B. 46.

106.59 Teachers; survivor benefits; Texas. The exclusion from gross estate provided in section 2039(c) applies to the value of the annuity, payable to a retired teacher's surviving spouse, under the Teacher Retirement System of Texas, which met the requirements of section 401(a) at the retirement date. Of the decedent's contributions to the plan made from community funds, only one-half of the value of the survivor benefits attributable to the decedent's contributions is includible in gross estate. §20.2039-2. (Sec. 2039, '54 Code.)

Rev. Rul. 75-408, 1975-2 C.B. 366.

106.60 Valuation. The standard rate tables contained in Rev. Rul. 62-216 are to be used in valuing annuity contracts issued by an organization such as a corporation, trust, fund or foundation (other than a commercial insurance company) for estate tax purposes. Rev. Rul. 62-216 amplified by Rev. Rul. 72-438. Amplified by Rev. Rul. 84-162. §§20.2031-7, 25.2512-5. (Secs. 72, 2031, 2512; '54 Code.)

Rev. Rul. 67-39, 1967-1 C.B. 18.

106.61 Valuation. Revised annuity rate tables to be used in valuing life annuity contracts issued after September 18, 1972, by an organization such as a corporation, trust, fund or foundation (other than an insurance company) in exchange for money or other property are provided. Further, tables for valuing so-called deferred annuity contracts issued by such organizations are also included. Rev. Ruls. 62-216 and 67-39 amplified. §§20.2031-1, 20.2055-1. (Secs. 72, 101, 170, 1011, 2031, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 72-438, 1972-2 C.B. 38.

106.62 Valuation; revised rate tables. The valuation tables that appear in regs. 25.2512-5 and 20.2031-7, are to be used in valuing annuity contracts issued by an organization such as a corporation, trust, fund, or foundation (other than an insurance company) for gift tax and estate tax purposes respectively. §§20.2031-7, 25.2512-5. (Secs. 2031, 2512; '54 Code.)

Rev. Rul. 84-162, 1984-46 I.R.B. 8.

106.63 Value attributable to employer contributions; State university. A State university, a wholly-owned State instrumentality that independently regulated its academic, research, and extension activities, was "separately organized" and, therefore, was an employer within the scope of section 2039(c)(3) of the Code. Accordingly, the value of annuity contracts owned by the decedent attributable to contributions made by the university is excludable from his gross estate. (Sec. 2039, '54 Code.)

Leslie E. Johnson, 56 T.C. 944, Acq., 1973-2 C.B. 2.

Appeals

(See: ADMINISTRATIVE)

Armed Forces

108.1 Annuities; election of survivor benefits. The value of an annuity payable to the widow or other survivors of a member of the uniformed services who elected a survivorship annuity under the Uniformed Services Contingency Option Act of 1953 is includible in his gross estate.§81.17. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 54-144, 1954-1 C.B. 15.

108.2 Annuities; election of survivor benefits. The entire value of annuities payable to the survivors of a retired member of the uniformed services, where such member elected to receive a reduced "retirement pay" in order to provide annuities payable after his death to his widow and children under the Uniformed Services Contingency Option Act, is includible in his gross estate. Modified by Rev. Rul. 72-332. §20.2039-1. (Sec. 2039, '54 Code.)

Rev. Rul. 59-254, 1959-2 C.B. 33.

108.3 Annuities; election of survivor benefits. The entire value of a survivor annuity payable under the Retired Serviceman's Family Protection Plan, the cost of which was borne by the decedent through the reduction of his retirement annuity, is not includible in his gross estate. Rev. Rul. 59-254 is modified to limit its application to estates of decedents dying before 1966. Modified by Rev. Rul. 75-176.§20.2039-2. (Sec. 2039, '54 Code.)

Rev. Rul. 72-332, 1972-2 C.B. 527.

108.4 Annuities; election of survivor benefits. The value of a survivor annuity payable to a retired serviceman's widow under the Survior Benefit Plan, provided for solely by the serviceman's decision to receive a reduced annuity, is not includible in his gross estate. Rev. Rul. 72-332 modified. §20.2039-2. (Sec. 2039, '54 Code.)

Rev. Rul. 75-176, 1975-1 C.B. 300.

108.5 Annuities; survivorship; veteran. The value of an annuity payable as "Veterans' Benefits" to the surviving spouse of a deceased veteran is not includible in the veteran's gross estate under section 2033 or section 2039. §§20.2033-1, 20.2039-1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 76-501, 1976-2 C.B. 267.

108.6 Combat zone; time for performing certain acts. The last date for the timely performance of the acts enumerated in section 7508, relating to an individual serving in a combat zone, is determined by adding to the time to be disregarded under section 7508 the time which remained for the performance of such acts at the time the individual entered the combat zone. (Secs. 6072, 7508; '54 Code.)

Rev. Rul. 76-425, 1976-2 C.B. 447.

108.7 Computation of tax; declared killed in action. Computation of the estate tax is illustrated for the estate of a serviceman declared killed in action after December 31, 1976. Such an estate, which is exempt under section 2201 from the "additional estate tax" as defined in section 2011(d), will have no estate tax liability if the maximum state death tax credit under section 2011 is allowable and the taxable estate is less than $2,265,000, or less than $825,000 in a jurisdiction that has no state death tax. §20.2201-1. (Sec. 2201, '54 Code.)

Rev. Rul. 78-361, 1978-2 C.B. 246.

108.8 Credit against tax; Vietnamese operations. For purposes of section 1.112-1(j) of the regulations, the phrase "direct support of military operations" include military operations that are in support of the Vietnamese operations, designated a combat zone by Executive Order, such as duties performed in the geographical areas of Cambodia, Laos, Thailand, and waters adjacent thereto and duties certified by the Defense Department as being in direct support of operations inside a combat zone. Therefore, estates of servicemen who died while performing such services are entitled to the benefits of section 2201 of the Code.§20.2201–1. (Sec. 2201, '54 Code.)

Rev. Rul. 70–621, 1970–2 C.B. 17.

108.9 Date of death; missing in action. The date of death of a member of the Armed Forces or a civilian employee, reported as missing in action or a prisoner of war and later declared to have been killed in action, is that determined under 37 U.S.C. section 555 or 556 unless a later actual date of death is subsequently established. Clarified by Rev. Rul. 78–372. I.T. 3857 and Rev. Ruls. 55–127 and 72–53 obsoleted. (Secs. 2,112, 692, 6013, 7508; '54 Code.)

Rev. Rul. 76–468, 1976–2 C.B. 202.

108.10 Death benefit gratuity. The allowance equal to six months' pay paid by the U.S. Government because of the death of an officer or enlisted member of the Armed Forces does not constitute property of the decedent and is not includible in the gross estate of the decedent. (Sec. 2033, '54 Code.)

Rev. Rul. 55–581, 1955–2 C.B. 38.

108.11 United Nations personnel. Personnel of the United Nations Korean Reconstruction Agency who are in a combat zone during the period designated by the President as the period of combatant activities, and who are serving under the United Nations Command pursuant to agreements between the United Nations Command and UNKRA, are individuals serving in support of the Armed Forces of the United States. Such individuals come under the extension of time provisions for certain tax matters applicable to persons in the military service on active duty. (Sec. 3804, '39 Code; Sec. 7508, '54 Code.)

Rev. Rul. 207, 1953–2 C.B. 442.

Assessments

(See: ADMINISTRATIVE)

Attorneys and agents

(See: ADMINISTRATIVE)

Bank deposits

(See also: Nonresidents; Situs of Property)

110.1 Diplomatic officer of foreign country. A duly accredited diplomatic officer, who merely represents his government in this country, is not a person engaged in business in the U.S. Consequently, any moneys deposited with any person carrying on the banking business by or for the diplomatic officer of a foreign country, who at the time of his death is neither domiciled in, nor a national of, the U.S., are exempt from Federal estate tax. (Secs. 2105, 2106; '54 Code.)

Rev. Rul. 56–52, 1956–1 C.B. 448.

Bankruptcy and receiverships

(See: ADMINISTRATIVE)

Bonds

(See: Securities; ADMINISTRATIVE)

Books and records

(See: ADMINISTRATIVE)

Business interests

(See: Valuation)

Charitable, etc., transfers

112.1 Beneficiary selected by trustee; Alabama. A bequest by an Alabama decedent to a trust for distribution to such charitable organization as the trustee in his sole discretion may select does not qualify for a charitable deduction.§20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 71–441, 1971–2 C.B. 335.

112.2 Bequests; amounts not fixed by will. Amounts distributed by the executor of an estate as charitable bequests, where the organizations and the amount to be distributed to each are not fixed by the will, are not deductible from the decedent's gross estate.§81.46. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Rev. Rul. 55–335, 1955–1 C.B. 455.

112.3 Bequests; Canadian foundation; funds used in U.S. college. A nonresident alien decedent provided in his will that 25 percent of the income of his residuary estate be paid to a Canadian foundation and used for the benefit of Canadian students attending a Michigan college. The bequest was predicated upon the condition that the college establish a tax exempt foundation under Canadian law. The tax exempt foundation was established and the specified income was paid to Canadian students by checks mailed directly to the college. The students endorsed the checks over to the college in payment of tuition and received any excess in cash to pay out-of-pocket expenses. *Held*, a deduction was properly claimed for a charitable contribution. (Secs. 2055, 2106; '54 Code.)

John Edgar McAllister, 54 T.C. 1407, Acq., 1971–1 C.B. 2.

112.4 Bequests; conditional. A charitable deduction is allowable with respect to a bequest of a remainder interest to a charitable association subject to the conditions that the beneficiary shall not remove from a certain county or cease to operate for the same charitable purposes. E.T. 13 superseded.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 67–229, 1967–2 C.B. 335.

112.5 Bequests; decreased by partial diversion. No charitable deduction is allowable for that portion of a charitable bequest that, pursuant to post-death court modification of the decedent's will in an action brought after the estate tax return was filed, is used to discharge part of the death tax liability imposed by reason of the decedent's death. §20.2055–3. (Sec. 2055, '54 Code.)

Rev. Rul. 76–236, 1976–1 C.B. 282.

112.6 Bequests; effective at death of secondary life tenant. A decedent made a bequest of real property to his brother for life and then to the brother's oldest descendent, if any, for life. Upon the death of the designated life beneficiaries, the property passed to a charitable organization. In determining the allowable charitable deduction for estate tax purposes, the actuarial factor representing the present worth of $1.00, the payment of which is postponed beyond the date of death of a primary life tenant (aged as of nearest birthday at the decedent's death) until the death of a person born at the death of the primary life tenant, properly reflects the maximum ascertainable value of the remainder interest.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 66–235, 1966–2 C.B. 440.

112.7 Bequests; foreign governments or political subdivisions. A bequest or transfer of property, the use of which is limited to exclusively charitable purposes, to a foreign government or political subdivision thereof is deductible under section 2055 of the Code. The *Old Colony Trust Co.*, the *Kaplun*, and the *National Savings and Trust Co.* decisions will be followed. The *Edwards* decision, relating to the disallowance of such a bequest, will no longer be relied upon.§20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 74–523, 1974–2 C.B. 304.

112.8 Bequests; household furnishings; remainder value. The remainder value of household furnishings contained in a deceased spouse's personal residence at the time of death in 1975, that are bequeathed to the surviving spouse for life and then to a charitable organization, does not qualify as a deductible remainder interest in personal residence. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–165, 1976–1 C.B. 279.

112.9 Bequests; intent; hospital in foreign country. The decedent directed that real property be held in trust and rentals be accumulated until a sufficient amount existed to build a hospital in Kerasitsa, Greece. Upon erection of the hospital, the trust was to sell the realty and use the proceeds to equip the hospital. *Held*, under applicable state law, the village of Kerasitsa, not the decedent's heirs, would inherit the property and the estate is entitled to a charitable deduction. (Sec. 2055, '54 Code.)

Peter Orphanos, 67 T.C. 59, Acq., 1977–2 C.B. 2.

112.10 Bequests; reformation by court. A charitable remainder testamentary trust not meeting the requirements of section 2055(e)(2)(A), created by a will executed in March 1974, and reformed by a probate court to convert the life beneficiary's income interest to a life annuity and to pay over the remaining funds to the named charity after administration of the estate will not meet the requirements of section 2055(e)(3). §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–17, 1976–1 C.B. 279.

112.11 Bequests; remainder interest; mortmain statute. A bequest of a remainder interest in a farm qualifies for an estate tax charitable deduction under section 2055 even though the applicable state mortmain statute requires the charitable recipient to dispose of the farm within ten years after its acquisition. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 84–97, 1984–27 I.R.B. 13.

112.12 Bequests; residue; value. The qualifying charitable deduction for a bequest of the residue of a decedent's estate is the residue value reduced by chargeable debts, expenses, and taxes that in accordance with the will were paid from income generated during the estate's administration. §20.2055–3. (Sec. 2055, '54 Code.)

Rev. Rul. 73–98, 1973–1 C.B. 407.

112.13 Bequests; residue; value. The amount allowable as a charitable deduction under section 2055 to the estate of a New York decedent, whose will specified that all taxes be paid out of the residue of the estate as an expense of administration, that no part of said taxes be apportioned to any beneficiary, and that the remainder be divided equally between a charitable organization and the decedent's son, is one-half the residue of the estate after payment of all taxes. If no clear, unambiguous direction against statutory apportionment of death taxes between the beneficiaries is made, then any state or Federal estate taxes payable on the residue are allocable to the portion of the estate bequeathed to the son, and the amount allowable as a charitable deduction is one-half the residuary estate before payment of taxes attributable to such residuary estate. §20.2055–3. (Sec. 2055, '54 Code.)

Rev. Rul. 76–358, 1976–2 C.B. 291; Rev. Rul. 76–359, 1976–2 C.B. 293.

112.14 Bequests; residue; value. The amount deductible from the gross estate of an Ohio decedent, whose estate contained both probate and nonprobate assets and whose will bequeathed the residue of the estate to qualified charities after payment of "all debts, funeral expenses and costs of administration", is the value of the residue reduced by the death taxes generated by the probate assets.§20.2055–3. (Sec. 2055, '54 Code.)

Rev. Rul. 77–202, 1977–1 C.B. 287.

112.15 Bequests; residue; value; closely held business. When expenses are payable out of the residuary estate, the value of the residuary charitable bequest must be reduced by an estimate of the maximum amount of interest that will be payable on federal estate taxes deferred under section 6166A to determine the amount of the charitable deduction allowable under section 2055. The charitable deduction must be reduced by the interest whether the deduction for this administration expense will be taken on the estate's income tax return or the federal estate tax return. §§20.2055–1, 20.6166–1, 20.6166A–1. (Secs. 2055, 6166, 6166A; '54 Code.)

Rev. Rul. 82–6, 1982–1 C.B. 137.

112.16 Bequests; saying of Masses. A charitable deduction is allowable for a bequest made to a church to say Masses for previously deceased members of a decedent's family, in a situation in which the Masses would be said even if the bequest were not made and the bequest becomes part of the general funds of the church. §20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 78–366, 1978–2 C.B. 241.

112.17 Bequests; saying of Masses; individual under vow of poverty. A bequest for the saying of Masses for the dead to an individual who is a member of a religious order that requires the taking of a vow of poverty is not deductible from gross estate as a transfer for public, charitable, or religious uses.§20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 68–459, 1968–2 C.B. 411.

112.18 Bequests; stock to charity; dividends to noncharitable beneficiary. An estate tax charitable deduction is not allowable for shares of stock bequeathed to charity where the will provides that, during administration of the estate, dividends from the stock are payable to a noncharitable beneficiary. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 83–45, 1983–1 C.B. 233.

112.19 Bequests; subject to defeasance at election of lineal heirs. The decedent's will provided for certain charitable bequests which were subject to defeasance at the election of the statutory beneficiaries under the Ohio Mortmain Statute. An Ohio Probate Court allowed the bequests to charity after affirmative ratification of the will by the beneficiaries. *Held,* under the Ohio Mortmain Statute, charitable bequests were voidable, rather than void, and the property thus passed to the charity from the decedent. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Dudley S. Blossom, 45 B.T.A. 691, Acq. withdrawn and Nonacq. substituted, 1966–2 C.B. 7.

112.20 Bequests; trust of remainder interest. To establish that a devise in trust of a remainder interest in both surface and subsurface rights in land would qualify for a charitable deduction, where a will failed to provide for withholding and adding to corpus such reserves for depletion of subsurface resources as would be considered adequate to maintain the corpus of the trust intact, it must be shown there is a charitable interest which is not contingent or defeasible. §§20.2031–7, 20.2055–2. (Secs. 2031, 2055; '54 Code.)

Rev. Rul. 60–162, 1960–1 C.B. 376.

112.21 Bequests; Zuni Indian Pueblo. The Zuni Indian Pueblo of New Mexico is not a political subdivision of the U.S., the State of New Mexico, or a Territory, and a decedent's bequest to the Pueblo is not allowable as a charitable deduction.§20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 74–179, 1974–1 C.B. 279.

112.22 Communal religious organization. Contributions made to or for the use of an exempt communal religious organization are not deductible if such organization is engaged in the operation of a commercial enterprise the proceeds of which inure to the common benefit of its members. (Sec. 2055, '54 Code.)

Rev. Rul. 57–574, 1957–2 C.B. 161.

112.23 Community recreational organization; use of facilities restricted. A nonprofit corporation which was organized to provide community recreational facilities without charge to the residents of a township but which restricts their use to less than the entire community on the basis of race is not organized and operated exclusively for charitable purposes. Contributions and transfers to or for the use of such an organization are not deductible under sections 170, 2055, 2106, or 2522 of the Code. §§20.2055–1, 20.2106–1, 25.2522(a)–1. (Secs. 170, 501, 2055, 2106, 2522; '54 Code.)

Rev. Rul. 67–325, 1967–2 C.B. 113.

112.24 Contingent; state inheritance taxes. The decedent's will provided for the establishment of a trust for the benefit of his wife. The wife was given powers of invasion and appointment. If she did not exercise the power of appointment, the remainder of the trust corpus was to fall into the decedent's residuary estate upon the wife's death. The residuary estate was placed in trust with the income therefrom payable to certain charities. *Held,* the amount of the charitable deduction is computed by reducing the value of the residue left to charities by the amount of state inheritance taxes; further *held,* the Commissioner did not meet his burden of proving a larger amount of tax asserted to be due in his amended pleadings. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Charles A. Brooks, 27 T.C. 295, Acq., 1957–2 C.B. 4.

112.25 Contingent upon death without survivors. In determining net estate, a deduction may not be taken on account of a charitable bequest that is to take effect only if the decedent's daughter dies without descendants surviving her and her mother.§§81.44, 81.46. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Sternberger, 348 U.S. 187, Ct. D. 1777, 1955–1 C.B. 450.

112.26 Contributions to State activity; promotion of the United Nations. Bequest, legacies, devices, transfers or gifts to or for the use of a committee created by executive order of the governor of a state as an official agency thereof to commemorate "United Nations Day" and to conduct a continuing program through the state university and state public school system for the education of the public, with respect to the purposes and the activities of the United Nations, are deductible, if made for exclusively public purposes.§§20.2055–1, 20.2106–1. (Secs. 2055, 2106; '54 Code.)

Rev. Rul. 62–66, 1962–1 C.B. 83.

112.27 Farms; charitable remainder; special use value. A farm in which the decedent has transferred a life interest, in trust or otherwise, to a member of the decedent's family with the remainder interest in the property going to charity may not be valued under section 2032A. §§20.2032A–8, 20.2055–2. (Secs. 2032A, 2055; '54 Code.)

Rev. Rul. 81–220, 1981–2 C.B. 175.

112.28 Income interest; participation fund. Method of reporting contributions of money and property made to an income participation fund of an exempt organization where payments from the net income of the fund are to be made to the contributors or to the contributors and their designated coparticipants during their lives.§§81.17, 81.44. (Secs. 811(c), 812(d), '39 Code; Secs. 2035, 2055, '54 Code.)

Rev. Rul. 55–275, 1955–1 C.B. 295.

112.29 Income interest; valuation. The value of an income interest may be computed by use of the actuarial tables prescribed in section 20.2031–7 of the regulations provided the entire amount (or a specific fraction) of the income from the tranferred property is receivable by the income beneficiary. Where a bequest provides that the annual income only up to three and one-half percent of the value of the subject property is payable to charity, the tables are not applicable in the valuation of the charitable interest, and a deduction is not allowable under section 2055 of the Code. Similarly, the gift tax charitable deduction is not allowable with respect to comparable inter vivos gifts. §§20.2031–7, 20.2055–2, 25.2512–5, 25.2522(a)–2. (Secs. 2031, 2055, 2512. 2522; '54 Code.)

Rev. Rul. 67–195, 1967–1 C.B. 267.

112.30 Indian tribal governments; treated as states or political subdivisions. Rev. Rul. 58–610, Rev. Rul. 68–231 and Rev. Rul. 74–179 are suspended as to their respective applications to Indian tribes, or subdivisions thereof, during the specified two years under section 7871 of the Code. §20.2055–1. (Secs. 61, 103, 170, 2055, 4041, 4221, 4253, 4483, 7871; '54 Code.)

Rev. Rul. 84–93, 1984–1 C.B. 279.

112.31 Interests in property; undivided portion. Application of section 2055(e) of the Code to the deduction for certain transfers with respect to estates of decedents dying after 1969 and before October 4, 1972 where the interest transferred is an undivided portion of an entire interest in property.§20.2055–2. (Sec. 601.105, S.P.R.; Sec. 2055, '54 Code.)

Rev. Proc. 72–45, 1972–2 C.B. 826.

112.32 Interests in property; undivided portion in trust. A charitable deduction is not allowable to the estate of a decedent who bequeathed the residuary estate in trust, with the spouse and a charity each entitled to half the income and, upon the spouse's death, half of the trust corpus is to be distributed to the charity and half of the trust corpus is to be distributed to the spouse's heirs. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 77–97, 1977–1 C.B. 285.

112.33 Interests in property; undivided portion of trust. A ten percent interest in a trust includible in the decedent's gross estate, as augmented by the residuary estate payable into the trust, payable immediately by the trustee to a charity which under local law is entitled to receive a ten percent interest in each asset comprising trust corpus and income from the date of death to distribution is not an interest transferred in trust and is allowable as a charitable deduction. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 75–414, 1975–2 C.B. 371.

112.34 Municipally owned and operated cemetery. A bequest to a city owned and operated cemetery that is to be used for the perpetual care and maintenance of the cemetery and that represents only a small portion of the city funds used annually to operate the cemetery is a transfer to a political subdivision for exclusively public purposes that qualifies for the estate tax charitable deduction under section 2055. §20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 79–159, 1979–1 C.B. 308.

112.35 Nonprofit cemetery. A bequest or devise to a trustee or trustees for the perpetual care of a nonprofit cemetery, owned by a corporation other than a religious organization, will not quality for the estate tax charitable deduction. Similarly, an inter vivos gift for the same purpose will not qualify for the gift tax charitable deduction.§§20.2055–1, 25.2522(a)–1. (Secs. 2055, 2522; '54 Code.)

Rev. Rul. 67–170, 1967–1 C.B. 272.

112.36 Pacific War Memorial Commission. Contributions, gifts, legacies, bequests, devises, or transfers to the Pacific War Memorial Commission, an agency of the Territory of Hawaii, are deductible for estate and gift tax purposes in the manner and to the extent provided by the Internal Revenue Code.§§81.44, 86.13. (Secs. 812(d), 1004, '39 Code; Secs. 2055, 2522, '54 Code.)

Rev. Rul. 54–220, 1954–1 C.B. 65.

112.37 Personal estate insolvent; testamentary power of appointment; intent of decedent. Decedent's will included charitable bequests and a residuary clause bequeathing the remainder of his estate to his brother and sister, including the corpus of a trust over which he had a general testamentary power of appointment exercised in his will. Without the trust corpus, the estate was insufficient to pay the charitable bequests, and a state court permitted the bequests to be paid from trust corpus. The Tax Court found that the consent decree was contrary to state law. However, state law permitted the charitable bequests to be paid from the trust corpus to carry out the intent of the decedent. Accordingly, the trust corpus did become part of the estate property subject to claims and the charitable bequests were deductible. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

William M. Lande, 21 T.C. 977, Acq., 1954–2 C.B. 4.

112.38 Personal residence; entire interest in sale proceeds. No charitable deduction is allowable for a remainder interest in a decedent's personal residence bequeathed to charity under a will which provides that the remainder is to be sold upon the life tenant's death and the entire sale proceeds are to be paid to charity. Rev. Rul. 76–543 amplified. Distinguished by Rev. Rul. 83–158. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 77–169, 1977–1 C.B. 286.

112.39 Personal residence; entire interest in sale proceeds or residence itself. A charitable deduction is allowed under section 2055(a) for the value of a charitable remainder interest in the proceeds from the sale of a decedent's personal residence if, under local law, the charity has the option to take the residence instead of the sale proceeds. Rev. Ruls. 76–543 and 77–169 distinguished. §20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 83–158, 1983–2 C.B. 159; Eliza W. Blackford, 77 T.C. 90. Acq., 1983–2 C.B. 1.

112.40 Personal residence; partial interest. No charitable deduction is allowable for a remainder interest in a decedent's personal residence that, upon termination of life estate, vested in a charitable organization and an individual as equal tenants in common because the charity was not given the entire remainder interest. Distinguished by Rev. Rul. 77–385. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–544, 1976–2 C.B. 288.

112.41 Personal residence; partial interest in sale proceeds. No charitable deduction is allowable for a remainder interest in a decedent's personal residence bequeathed to charity under a will which provides that the remainder is to be sold upon the life tenant's death and a part of the sale proceeds is to be paid to charity. Amplified by Rev. Rul. 77–169. Distinguished by Rev. Rul. 83–158. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–543, 1976–2 C.B. 287.

112.42 Proration of charitable deduction. Where decedent had a power of appointment over certain property not includible in her gross estate but which, by will, was expressly made available along with probate assets for the payment of legacies, all bequests, charitable and noncharitable, are considered payable proratably out of probate assets and the appointed property. Therefore, only the amount which is determined to be paid to charities pro rata out of the probate assets is deductible.§81.44. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Rev. Rul. 54–90, 1954–1 C.B. 194.

112.43 Reimbursement of tax increase; deduction for administration expenses. A life tenant, for whose benefit the executor of an estate elected to claim administration expenses as income tax deductions rather than as deductions in computing decedent's taxable estate, was required under State law to reimburse the charitable remaindermen for a reduction in the charitable contributions resulting from the election. *Held,* the charitable contribution includes the amount of the reimbursement. (Sec. 2055, '54 Code.)

Harry Britenstool, 46 T.C. 711, Acq., 1978–2 C.B.

112.44 Reimbursement of tax increase; deduction for administration expenses. The executor of a testamentary charitable remainder trust made an election to claim administration expenses on the estate's income tax return. Pursuant to State law, the residue of the estate was reimbursed in an amount equal to the increase in the estate tax as a result of the election. The reimbursement is included in the corpus for purposes of computing the value of the charitable deduction under section 2055(a). §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 78–445, 1978–2 C.B. 242.

112.45 Religious order; poverty vows. The charitable deduction is not allowable for the value of property passing under the laws of intestacy to a person in a religious order under a vow of poverty.§81.44. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Rev. Rul. 55–760, 1955–2 C.B. 607.

112.46 Religious order; poverty vows. The value of property bequeathed to a legatee in a religious order which passed to the order as a result of the legatee's vows of poverty and renunciation of all property rights in favor of the order is not deductible from the decedent's gross estate as a charitable transfer since the property passed to the order by virtue of the legatee's contractual agreement and not by way of the decedent's will.§81.44. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Rev. Rul. 55–759, 1955–2 C.B. 607.

112.47 Remainder interest; contingent on children surviving. A deduction is not allowable for a charitable trust remainder where the life tenant is the decedent's 56 year old son who had neither natural nor adopted children at decedent's death and payment to the charity is contingent upon the life tenant's death without surviving children.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 71–442, 1971–2 C.B. 336.

112.48 Remainder interest; personal residence. No charitable deduction is allowable for a remainder interest in a decedent's personal residence passing to charity upon the death of the decedent's child for whom the residence was held in a testamentary trust, valid under applicable local law, that is neither a charitable remainder annuity trust or unitrust nor a pooled income fund. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–357, 1976–2 C.B. 285.

112.49 Remote contingency. A charitable deduction is allowable for a bequest to charity which is contingent upon the failure of issue by the childless daughters of decedent who, at the date of decedent's death, were both over 54 years of age.§20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 59–143, 1959–1 C.B. 247.

112.50 Residuary estate; executrix to name charities; Massachusetts. Under Massachusetts law, a bequest of the residuary estate to the executrix with instructions to distribute the property to whatever charities she may deem worthy qualifies for the charitable deduction.§20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 69–285, 1969–1 C.B. 222.

112.51 Residuary interest; executor's discretion. A decedent's will provides for a legacy of specific dollar value to the decedent's adult child and for distribution of the estate's residue to a qualified charitable organization. The executor has absolute power to satisfy the legacy in cash, in property valued at fair market value on the date of distribution, or a combination of both, and to select the date for distribution of the estate's assets. Applicable state law requires the executor to act impartially with respect to the beneficiaries. A deduction is allowable under section 2055 for the bequest of the residue. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 81–20, 1981–1 C.B. 471.

112.52 Residuary interest; nonprofit retirement home; inadequate funds. A bequest of the residuary interest in a decedent's estate in trust to establish a nonprofit retirement home is an allowable charitable deduction in a State applying the *cy pres* doctrine, even though the residue is insufficient to accomplish the testamentary objective.§20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 72–442, 1972–2 C.B. 527.

112.53 Retained life interest; charitable corporation. The value of inter vivos transfers to a charitable corporation is includible in the estate of the donor who, as president of the corporation, retained power over the disposition of its funds. The value is also includible in the value of the decedent's adjusted gross estate in determining the maximum marital deduction allowable and qualifies as a charitable deduction. §§20.2036–1, 20.2055–1, 20.2056(c)–1. (Secs. 2036, 2055, 2056; '54 Code.)

Rev. Rul. 72–552, 1972–2 C.B. 525.

112.54 State Bar. The satisfaction on or after July 5, 1977, of a legally enforceable obligation resulting from the bequest or devise of a decedent who died prior to that date to an integrated State Bar may qualify as a charitable transfer. Rev. Rul. 77–232 amplified. §§20.2053–5, 20.2055–1, 25.2522(a)–1, 301.7805–1. (Secs. 170, 2053, 2055, 2522, 7805; '54 code.)

Rev. Rul. 78–129, 1978–1 C.B. 67.

112.55 State Bar. Unrestricted contributions made to or for the use of an integrated State Bar that is not a political subdivision of a state and has private as well as public purposes are not deductible under section 2055 or section 2522. Rev. Rul. 59-152 revoked. Amplified by Rev. Rul. 78-129. §§20.2055-1, 25.2522(a)-1, 301.7805-1. (Secs. 170, 2055, 2522, 7805; '54 Code.)

Rev. Rul. 77-232, 1977-2 C.B. 71.

112.56 Statutory amount exceeded; New York Decedent Estate Law. Decedent bequeathed his residuary estate, following the widow's life estate, to specified legatees, and the remainder to a charitable institution. His will was probated by the New York Surrogate's Court, and the final accounting approved by decree in 1949. A grandson challenged the interpretation of Section 17 of the New York Decedent Estate Law, which limits testamentary gifts to one-half of the estate after payment of debts. A compromise agreement was reached and a decree was entered by the Court in 1950 fixing the amount by which the charitable bequest exceeded the amount permitted under Section 17. *Held,* since a charitable bequest in violation of Section 17 is not void, but merely voidable at the instance of certain persons, which included the grandson, the bequest to the charitable institution was deductible to the extent it did not violate the New York law. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Nicholas Murray Butler, 18 T.C. 914, Acq., 1953-1 C.B. 3.

112.57 Transfer contingent on approval. No deduction is allowable for a testamentary bequest to charity which is conditioned upon the full approval of a third party after the testator's death.§20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 64-129, 1964-1 (Part 1) C.B. 329.

112.58 Trust; care of homeless animals. A bequest to trustees, to use and apply the income and principal of the trust estate for the care of neglected or homeless domestic animals constitutes a bequest to trustees for charitable purposes, and the value thereof is deductible from the decedent's gross estate. (Sec. 2055, '54 Code.)

Rev. Rul. 55-519, 1955-2 C.B. 386.

112.59 Trust corpus transferred to Catholic Bishop for Diocese. Under the trust agreement of a trust established by decedent prior to her death, trust corpus was divided into three equal funds (A, B, and C) and delivered to the Bishop of the Roman Catholic Diocese of Richmond, to be used for purposes prescribed by the trust agreement. Trust C was to be used "For missionary purposes of the Diocese of Richmond——." *Held,* Chapter 57 of the Virginia Code of 1950 imposed no limitations on the Diocese's holdings of personalty; therefore, the transfer was valid under Virginia law and the estate was entitled to a charitable deduction. (Sec. 2055, '54 Code.)

Florence H. Lawler, 52 T.C. 268, Acq., 1970-1 C.B. xvi.

112.60 Trust; deduction. A trust does not qualify as a charitable remainder trust and no deduction is allowable under sections 170 and 2522 if it is possible that federal estate and state death taxes may be payable from the trust assets. However, a trust will qualify as a charitable remainder trust and a deduction is allowable under sections 170 and 2522 if a secondary life beneficiary furnishes the funds for the payment of any death taxes for which the trust may be liable. §§20.2036-1, 25.2522(c)-3, 301.7805-1. (Secs. 170, 664, 2036, 2522, 7805; '54 Code.)

Rev. Rul. 82-128, 1982-2 C.B. 71.

112.61 Trust for students. A bequest in trust for the benefit of students enrolled in a particular school as of a particular date is not deductible as a bequest for educational purposes unless the will can be construed as creating a trust for educational purposes for the benefit of a general class, as distinguished from mere benevolence. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Rev. Rul. 57-449, 1957-2 C.B. 622; Harley J. Davis, 26 T.C. 549, Acq., 1957-2 C.B. 3.

112.62 Trust remainder; annuity interest. No charitable deduction is allowable for the value of an annuity interest passing to a qualified charity upon the death of each of three individual recipients under a charitable remainder annuity trust that provides an annuity to the decedent's spouse for life and at the spouse's death to the individuals. The value of the charitable remainder interest, however, is deductible. §20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 76-225, 1976-1 C.B. 281.

112.63 Trust remainder; ascertainable interest. Disclaimers by the life beneficiaries on New York pre-1969 testamentary charitable remainder trusts, releasing their rights to have the trustees' broad administrative and investment powers exercised in a manner that would result in receipt of income in excess of that to which they would have received under State law had the powers not been granted and disclaiming such amounts, were valid under State law and therefore were effective to render the value of the trust remainder ascertainable for purposes of the charitable deduction. (Sec. 2055, '54 Code.)

Harry C. Jaeker, 58 T.C. 166, Acq. in result, 1974-1 C.B. 2.

112.64 Trust remainder; ascertainable interest. Broad discretionary powers given a trustee to allocate receipts and expenditures between principal and income and to invest in wasting assets without provision for a reserve or sinking fund, in a state whose law prevents the trustee from disregarding the interests of remaindermen, did not preclude the deductibility under section 2055(a)(2) of the otherwise undisputed value of trust remainder interests in favor of charitable organizations. (Sec. 2055, '54 Code.)

Lillie MacMunn Stewart, Nonacq., 52 T.C. 830, 1978-1 C.B. 3.

112.65 Trust remainder; ascertainable interest; local law applied. Under the terms of a testamentary trust, decedent's husband was to receive the income from corpus for life with the remainder to charity. The trustees were authorized to invest in regulated investment companies, determine all questions between principal and income, and invade corpus when necessary for husband's support and maintenance. *Held,* under Massachusetts law, the powers to invest in regulated investment companies and to determine all questions between income and principal did not render the value of the remainder interest unascertainable and in providing for the life tenant's maintenance or support the intent of the settlor was that his own resources were not to be disregarded. Accordingly, the value of the remainder interest was ascertainable and deductible. (Sec. 2055, '54 Code.)

Phyllis W. McGillicuddy, 54 T.C. 315, Acq., 1973-2 C.B. 2.

112.66 Trust remainder; ascertainable interest; power of trustees. Decedent established a testamentary trust which was to distribute income to named charitable and noncharitable beneficiaries and the remainder to charity. The trustees were given discretionary power with respect to the investment of property and the allocation of receipts between income and principal. *Held,* the trustees' discretionary power to deplete corpus was sufficiently circumscribed by the will's language directing the trustees to follow the strictest principles of integrity in the administration of the trust. There was no indication that the testator wished to give preference to the life beneficiaries over the gift of the remainder to charity. Accordingly, the value of the remainder interest is ascertainable and deductible. (Sec. 2055, '54 Code.)

Kate Froman, 58 T.C. 512, Acq., 1973-2 C.B. 2.

112.67 Trust remainder; capital gains dividends as corpus. Where an irrevocable trust provides that capital gain dividends received from stock in regulated investment companies shall be treated as corpus and held for the charitable remainderman rather than distributed to the noncharitable life tenant, the present worth of the remainder interest is deductible and may be valued by the use of the appropriate actuarial remainder table. However, where such capital gain dividends are treated as income and paid to the life tenant, the charitable interest is not severable since no formula is available for ascertaining its value and no charitable deduction is allowable. Rev. Rul. 55-620 revoked. Supplemented by Rev. Rul. 67-33. §20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 60-385, 1960-2 C.B. 77.

112.68 Trust remainder; capital gains distributions from mutual funds. Where local law authorizes a trustee to invest corpus in the stock of regulated investment companies and to pay out capital gains distributions received therefrom as income under the general provisions of the governing instrument, a charitable deduction is not allowable with respect to a charitable remainder interest as the charitable interest is not severable from the noncharitable interest. This ruling will not be applied with respect to transfers completed prior to May 1, 1967, or, under certain circumstances, to transfers made under instruments executed prior to that date. Rev. Rul. 60-385 supplemented. §§20.2055-2, 25.2522(a)-2, 301.7805-1. (Secs. 2055, 2522, 7805; '54 Code.)

Rev. Rul. 67-33, 1967-1 C.B. 62.

112.69 Trust remainder; care of pet animal. The deductibility of a bequest to a charitable institution subject to an otherwise qualifying charitable remainder annuity trust that provides care for a pet animal during its lifetime is discussed with respect to the treatment of the trust provisions under the laws of three different states.§20.2055-2. (Secs. 664, 2055; '54 Code.)

Rev. Rul. 78-105, 1978-1 C.B. 295.

112.70 Trust remainder; corpus distribution; limitation. A charitable deduction is not allowed for a remainder interest in a testamentary trust where the corpus may be distributed to any tax-free organization under the income, estate, gift or inheritance tax laws of the U.S. or of any state having jurisdiction over the trust.§20.2055-1. (Sec. 2055, '54 Code.)

Rev. Rul. 71-200, 1971-1 C.B. 272.

112.71 Trust remainder; death after October 9, 1972. The estate of a decedent who died after October 9, 1972, is not entitled to a charitable deduction for amounts bequeathed to a charitable remainder trust that does not qualify as a charitable remainder annuity trust or a charitable remainder unitrust under section 664 or a pooled income fund under section 642(c)(5), even though the estate of the decedent's spouse, who died prior to October 9, 1972, was entitled to a charitable deduction for amounts bequeathed to the same trust. §20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 76-198, 1976-1 C.B. 280.

112.72 Trust remainder; death of donee; state inheritance. A decedent's will created a trust giving an individual a lifetime income interest and a testamentary general power of appointment over the corpus. Failure to exercise the power of appointment would cause the trust corpus to pass to a charity described in section 2055(a). State law exempts property passing to such charities from inheritance taxes and taxes the estate of the creator of a power of appointment upon the exercise of the power. A charitable deduction for the residue of the estate passing to the same charity is not reduced by the hypothetical state inheritance taxes that would be imposed upon the exercise of the power, if the donee of the power dies before exercising the power and before the due date for filing the estate tax return. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 80–66, 1980–1 C.B. 204.

112.73 Trust remainder; death of income beneficiary. A charitable deduction is allowable for the value of a charitable remainder interest in a split interest trust, which did not meet the requirements of section 2055(e)(2)(A) and was not amended or conformed to meet that section, that passed directly to the charity upon the death of the noncharitable income beneficiary prior to the due date of the decedent's estate tax return. Clarified by Rev. Rul. 82–97. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–545, 1976–2 C.B. 289.

112.74 Trust remainder; death of income beneficiary; judicial reformation. Where judicial reformation of a testamentary charitable remainder trust is initiated after the life beneficiary's death and before the due date of the testator's return, the amount of the charitable deduction allowable under section 2055(a) is determined as if the trust provided for a 6 percent annuity. Rev. Rul. 76–545 clarified. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 82–97, 1982–1 C.B. 138.

112.75 Trust remainder; death of income beneficiary as disclaimer of interest. The death of the life beneficiary of a charitable remainder unitrust, before the due date of the decedent-grantor's estate tax return and before any distributions have been made, is not equivalent to a disclaimer of such interest or a termination of a power to consume or invade the property for purposes of section 2055(a) §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–546, 1976–2 C.B. 290

112.76 Trust remainder; death of successive life tenants. The amount determined as the present value of the remainder interest in a testamentary trust passing to charity following the death of successive life tenants is allowable as a charitable deduction. The manner of determining the present value of the remainder interest is explained.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 68–270, 1968–1 C.B. 407.

112.77 Trust remainder; employees' welfare and retirement fund. The terms of decedent's will established a trust providing for a life estate for his widow. On the termination of the life estate, the trust was to terminate with its proceeds from the sale of the securities of the trust to be transferred to the directors of a named corporation "to be used as a Retirement and/or Welfare Fund, the income and/or principal of said Fund to be distributed to employees of the corporation in any manner as aforesaid Directors may promulgate after due counsel with a committee representing said employees." The directors could choose to use this fund solely as a retirement fund for employees for the corporation without regard to need. *Held,* a charitable deduction is allowable for the gift of the remainder interest. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Leonard O. Carlson, 21 T.C. 291, Nonacq., 1956–2 C.B. 10.

112.78 Trust remainder; farm. A deduction is not allowable under section 2055 for a bequest of a contingent remainder interest in a farm. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 85–23, 1985–1 C.B. 557.

112.79 Trust remainder; governing instrument; requirements. In order for the charitable interest in a testamentary charitable remainder trust to qualify for an estate tax charitable deduction, the governing instrument of the trust must provide that the obligation to pay the unitrust or annuity amount begins on the date of death, and for corrective payments in the case of an underpayment or overpayment of the amount determined to be payable. Rev. Rul. 72–395 modified. Clarified by Rev. Rul. 82–165. §§20.2055–2, 301.7805–1. (Secs. 664, 2055, 7805; '54 Code.)

Rev. Rul. 80–123, 1980–1 C.B. 205.

112.80 Trust remainder; governing instrument; sample provisions that satisfy requirements. Sample provisions for inclusion in the governing instrument of a testamentary charitable remainder trust in order for the charitable interest to qualify for an estate tax deduction. Rev. Ruls. 72–395 and 80–123 clarified. §20.2055–2. (Secs. 664, 2055; '54 Code.)

Rev. Rul. 82–165, 1982–2 C.B. 117.

112.81 Trust remainder; interest-free notes renewed without adequate security. A bequest in trust otherwide deductible under section 2055(a)(3) is not allowable by virtue of section 2055(e) of the Code where the decedent's son's interest-free notes are renewed, without adequate security, by the trustee in the year of transfer of the bequest.§20.2055–4. (Sec. 2055, '54 Code.)

Rev. Rul. 70–451, 1970–2 C.B. 196.

112.82 Trust remainder; interest in principal disclaimed. Decedent created a spendthrift trust under which the income was to be paid to his wife for life with remainder to charity. The trustee had discretionary power to invade principal for the wife's maintenance, support, comfort, and well-being. After decedent's death, the wife executed disclaimers of any interest in the principal of the trust fund. The disclaimers were agreed to by the trustee and recorded in the local Pennsylvania court. *Held,* the value of the remainder of the trust after the wife's life estate was deductible as a charitable bequest. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

James M. Schoonmaker, Jr., 6 T.C. 404, Nonacq. withdrawn and Acq. in result substituted, 1967–1 C.B. 2.

112.83 Trust remainder; interest passing directly to charity; settlement agreement. No charitable deduction is allowable under section 2055(a) of the Code to the estate of a decedent who executed a will and died in 1975 for a remainder interest passing directly to a charitable beneficiary pursuant to the settlement of a will contest of a split interest trust that did not meet the requirements of section 2055 (e)(2). Distinguished by Rev. Rul. 78-152.§20.2055–5. (Sec. 2055, '54 Code.)

Rev. Rul. 77–491, 1977–2 C.B. 332.

112.84 Trust remainder; interest passing to charity. A charitable deduction is allowable for the value of property passing to a qualified charity from a testamentary charitable remainder trust, not meeting the requirements of section 2055(e)(2)(A), as a result of the life income beneficiary's election to take against the will. Rev. Rul. 77–491 distinguished §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 78–152, 1978–1 C.B. 296.

112.85 Trust remainder; interrelated death taxes; stated dollar annuity. A charitable deduction may not be allowed with respect to the remainder interest of an otherwise qualifying charitable remainder annuity trust to which the residue of decedent's estate was payable after payment of estate taxes and which, if the taxes were based upon a charitable deduction with respect to the entire remainder, would fail to satisfy the 5 percent test of section 664 because the decedent specified the annuity amount in stated dollar terms. However, if it is possible to compute a deduction amount that will result in funding the trust in an amount that satisfies the 5 percent test, a deduction will be allowed in an amount that will cause the test to be met exactly. §20.2055–3. (Secs. 664, 2055; '54 Code.)

Rev. Rul. 78–283, 1978–2 C.B. 243.

112.86 Trust remainder; invasion of corpus. A charitable deduction may be allowed for bequests or gifts of remainder interest in a trust in cases where the will or instrument authorizes invasion of corpus for the comfortable maintenance and support of life beneficiaries if there is an ascertainable standard covering comfort and support and the probability of invasion is remote or the extent of the invasion is calculable.§81.44. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Rev. Rul. 54–285, 1954–2 C.B. 302.

112.87 Trust remainder; invasion of corpus. Decedent provided for establishment of a testamentary trust to pay income to her brother-in-law for life, and upon his death, to distribute corpus to named charities. The trustee was authorized to pay to the brother-in-law so much of the principal as the trustee should "in its absolute discretion deem necessary or advisable in order to provide for . . . (his) support, maintenance, welfare, and comfort." *Held,* the trust instrument provided measurable standards limiting the power of invasion and the possibility of invasion of the corpus was so remote as to be negligible. Therefore, the charitable remainder was deductible. (Sec. 2055, '54 Code.)

Mary Cotton Wood, 39 T.C. 919, Acq. in result, 1966–1 C.B. 3.

112.88 Trust remainder; invasion of corpus. A charitable deduction is not allowed for the value of a remainder interest in a testamentary trust where the corpus may be used to pay all taxes imposed on the trust or on the interest of any trust beneficiary.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 71–221, 1971–1 C.B. 274.

112.89 Trust remainder; invasion of corpus. Decedent, who died in 1967, bequeathed charitable remainder interests to six charities upon termination of a testamentary trust. Under terms of the will the beneficiaries were given lifetime income interests in the trust which were payable in fixed amounts. The will further provided that if a beneficiary is incompetent at the time assets are to be distributed to him, the trustee, at his discretion, may continue to hold such assets in trust for such beneficiary. The trustee may expend for the care, support, etc., of such beneficiary such amounts of the income and principal thereof as he deems advisable. *Held,* under the wording of the will the trustee does not have authority to invade the trust corpus. The claimed charitable deduction is ascertainable by actuarial computations and is allowable. (Sec. 2055, '54 Code.)

Richard F. O'Brien, Jr., 57 T.C. 27, Acq., 1972–1 C.B. 2.

112.90 Trust remainder; invasion of corpus. Decedent's will established a trust to provide for the "comfort of my sister," a member of a religious order requiring a vow of poverty. Upon her death, the remainder was to go to the religious order. *Held,* the testator's intent was to give the executor power to continue payments made by the decedent during his lifetime. "Comfort" was an ascertainable standard of invasion, and the bequest of the remainder to the order was properly deducted as a charitable bequest. (Sec. 2055, '54 Code.)

Bernard J. McGuire, 59 T.C. 361, Acq. in result, 1973–2 C.B. 2.

112.91 Trust remainder; invasion of corpus. Discretionary powers over trust income and principal held by the trustees of a testamentary trust the income from which was payable to decedent's son for life, with the remainder payable to charity, were subject to certain limits under New York state law and therefore did not constitute a power of indirect invasion of corpus, and the value of the charitable remainder was ascertainable and deductible. (Sec. 2055, '54 Code.)

Abraham Simonson, 59 T.C. 535, Nonacq., 1978–1 C.B. 3.

112.92 Trust remainder; invasion of corpus. The fact that a trustee under a testamentary trust had certain discretionary powers with respect to investments, payment of enumerated obligations, and allocation of receipts between income and principal did not cause a charitable remainder to be unascertainable for purposes of reg. 20.2055–2(a), and the value of the remainder was properly calculated without reduction for the value of property interests passing to the surviving spouse as the result of an election to take under the will in lieu of community property interests. (Sec. 2055, '54 Code.)

Mose Sumner, 59 T.C. 837, Nonacq., 1978–2 C.B 4.

112.93 Trust remainder; invasion of corpus; contingent bequests. A charitable deduction is not allowed for the value of a remainder interest in a testamentary trust where the corpus is subject to invasion on behalf of a life beneficiary and to contingent bequests to noncharitable beneficiaries.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 68–336, 1968–1 C.B. 408.

112.94 Trust remainder; invasion of corpus; disclaimer. The value of a charitable trust remainder is deductible from the gross estate, prior to the tax Reform Act of 1969, when the income beneficiary's interest in the corpus has been disclaimed in a court enforced timely agreement between the beneficiary and the trustee.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 71–483, 1971–2 C.B. 337.

112.95 Trust remainder; invasion of corpus; in favor of widow. Charitable bequests from the corpus of a testamentary trust are not deductible where the corpus may be used in whole or in part for the comfort, support, maintenance, and/or happiness of a testator's wife. E.T. 12 superseded.§20.2055–1. (Sec. 2055; '54 Code.)

Rev. Rul. 67–279, 1967–2 C.B. 333.

112.96 Trust remainder; invasion of corpus; unforeseen occurrences. A charitable deduction is not allowable for a charitable remainder trust where the trustee's power to invade corpus for unforeseen occurrences in addition to a limited power creates an indefinite and immeasurable standard of invasion for life tenants. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 70–450, 1970–2 C.B. 195.

112.97 Trust remainder; marital deduction trust. A decedent bequeathed to the surviving spouse who was over 80 years of age, a life estate in trust with a general power of appointment. The spouse executed an affidavit in a compliance with section 2055(b)(2) declaring the intention to exercise the power of appointment in favor of certain charitable organizations and subsequently did exercise the power by will. *Held,* the estate was entitled to both a charitable deduction under section 2055 for the value of the remainder interest and a marital deduction under section 2056 for the value of the trust. The spouse's estate was also entitled to a charitable deduction for the value of the trust. (Secs. 2055, 2056; '54 Code.)

Edna Allen Miller, 48 T.C. 251, Acq., 1978–2 C.B. 2; Ella Pfeifer, 69 T.C. 294, Acq., 1978–2 C.B. 2.

112.98 Trust remainder; pool income fund. An otherwise qualifying fund whose governing instrument permits the duration of a beneficiary's income interest to be measured by the life of another does not qualify as a pooled income fund under section 642(c)(5), and the value of a remainder interest in property transferred to the fund is not deductible under section 170, 2055, 2106, or 2522, even though the instrument of transfer bases the duration of the designated beneficiary's income interest on the beneficiary's life. The fund's governing instrument may be amended to qualify prospectively if the fund has not accepted property under a defective instrument of transfer. §§20.2055–2, 20.2106–1, 25.2522(c)–3. (Secs. 170, 642, 2055, 2106, 2522; '54 Code.)

Rev. Rul. 79–61, 1979–1 C.B. 220.

112.99 Trust remainder; post-1972 amendment by trustee. A charitable remainder trust executed before 1973, whose governing instrument was amended in 1975 by the trustee as provided by section 2055(e)(3) of the Code after the grantor's death earlier that year, may qualify as a charitable remainder unitrust, even though the amended instrument does not contain certain mandatory provisions which were suspended in certain cases by section 1.664–1(g)(2) of the regulations and a deduction for the remainder interest is not disallowed. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–370, 1976–2 C.B. 286.

112.100 Trust remainder; power of appointment; division of assets. Decedent was the beneficiary of a testamentary trust established under the will of her predeceased husband. The trust gave the decedent a power of appointment over the corpus of the property and provided that upon the death of the decedent, noncharitable beneficiaries would receive life income interest equal to 60% of the trust income and a charitable organization would receive a income interest equal to 40% of the trust income. After decedent's death, the trustee was informed that the estate would not be entitled to a charitable deduction under section 2055(a) of the Code because the trust did not comply with the restrictions contained in section 2055(e). The trustee, pursuant to specific authority in the trust instrument, segregated 40% of the trust assets and held this portion exclusively for the benefit of the charitable organization. *Held,* a wholly charitable trust was created for purposes of section 2055(e)(3) and the estate is entitled to a charitable deduction for the value of the 40% portion. (Sec. 2055, '54 Code.)

Nancy F. Crafts, 74 T.C. 1439, Acq. in result, 1981–2 C.B. 1.

112.101 Trust remainder; power to transfer to noncharitable parties. No deduction is allowable under section 2055 of the Code, prior to the Tax Reform Act of 1969, where the trustee life-income beneficiary's power to terminate all or part of the trust could terminate both her own interest and charity's remainder interest. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 71–6, 1971–1 C.B. 273.

112.102 Trust remainder; probability of charitable transfer. A charitable remainder interest in an irrevocable trust subject to invasion to make fixed payments to the life tenant is not deductible where the probability that the transfer will not occur is greater than five percent. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 70–452, 1970–2 C.B. 199.

112.103 Trust remainder; probability of charitable transfer; amendment. No deduction is allowable under section 2055 for a charitable remainder trust that, pursuant to the provisions of section 2055(e)(3), was amended and reformed to meet the conditions of section 20.2055–2(b)(1) of the regulations requiring that only a negligible chance exist that the charitable transfer will not become effective.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 77–374, 1977–2 C.B. 329.

112.104 Trust remainder; probability of charitable transfer; contingent bequest. A charitable deduction is allowed for the present value of the charitable remainder interest in a contingent pre-residuary bequest to a relative that is to be transferred as a part of the residue to a qualifying charitable remainder unitrust upon the survival of the spouse of the decedent for 30 days, the non-occurrance of which is considered negligible.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 78–255, 1978–1 C.B. 294.

112.105 Trust remainder; split-interest; power of appointment. The estate of a decedent who executed a will and died after 1969 is not entitled to a charitable deduction for a remainder interest in a split-interest trust that was created under the will of a testator who died before 1970, granted the decedent a power of appointment, which the decedent failed to exercise, and provided, upon failure of the decedent to exercise the power, for a life estate to another party with the remainder payable to a charitable organization. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–504, 1976–2 C.B. 286.

112.106 Trust remainder; subject to power of invasion. A decedent's bequest of his residuary estate to charitable organizations, after specified monthly payments to be made to his widow during the predictable period his estate would be administered, results in an ascertainable amount allowable as a deduction under section 2055 of the Code. Section 201 of the Tax Reform Act of 1969 does not apply in this instance as the will was executed before Oct. 9, 1969, and the testator died before Oct. 9, 1972.§20.2055–2. Clarified by Rev. Rul. 83–20. (Sec. 2055, '54 Code.)

Rev. Rul. 74–97, 1974–1 C.B. 281.

112.107 Trust remainder; subject to power of invasion. The decedent's will provided for the payment out of the income of a testamentary trust having a corpus of $600,000 of an annuity of $5,000 a year for life to the decedent's 78-year old brother. The trustees were authorized to apply any part of the trust income or principal "to take care of any emergency, illness, or necessity" of the brother. Two charities named in the will were to receive the balance of the trust income during the brother's life and the remainder of the trust estate after the brother's death. *Held,* only the bequests of the remainder interests were deductible. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Oliver Lee, 28 T.C. 1259, Acq., 1958–2 C.B. 6.

112.108 Trust remainder; term of income estate. An otherwise qualifying testamentary trust providing for payment until the death or remarriage of the income beneficiary fails to qualify as a charitable remainder trust and no charitable deduction is allowable. A similar trust providing for a reduced payment upon the beneficiary's remarriage, with the balance of the beneficiary's share distributed to the charitable remainder beneficiaries, does qualify; however, no deduction is allowed for the value of the contingent unitrust amount payable to charity upon the beneficiary's remarriage. §20.2055–2. (Secs. 664, 2055; '54 Code.)

Rev. Rul. 76–291, 1976–2 C.B. 284

112.109 Trust remainder; unitrust. The transfer of property to a charitable remainder unitrust, the trustee and remainder beneficiary of which was an organization described in sections 170(c) and 2522 at the time of the transfer, will qualify for the gift tax deduction even though the governing instrument of the trust limits ultimate distribution to organizations described in section 170(c) and there exists the remote possibility the charitable remainderman would not qualify under sections 170(c) and 2522 upon termination of the trust. A charitable deduction to the donor's estate will depend on qualification of the charitable remainderman under section 2055 at the date of the donor's death. §§20.2055–2, 20.2106–1, 25.2522(a)–1. (Secs. 170, 664, 2055, 2106, 2522; '54 Code.)

Rev. Rul. 76–307, 1976–2 C.B. 56.

112.110 Trust remainder; unitrust. The value of that portion of the remainder interest in property transferred to a trust qualifying as a charitable remainder unitrust that passes to organizations described in section 2055(a) qualifies for an estate tax charitable deduction. The value of that portion passing to an organization meeting the requirements of section 170(c) but not described in section 2055(a) does not qualify. Rev. Rul. 76–544 distinguished.§20.2055–2 (Sec. 2055, '54 Code.)

Rev. Rul. 77–385, 1977–2 C.B. 331.

112.111 Trust remainder; unitrust; revocable secondary life interest. An individual made an incomplete gift to the individual's spouse, for purposes of section 2511, when the individual created and funded an inter vivos charitable remainder unitrust and reserved the right to revoke the spouse's secondary life interest by will. However, since the charitable organization will in all events receive the corpus upon the death of the survivor of the individual and the spouse, the individual has made a completed transfer to the organization, and a charitable deduction is allowable under section 2522 for the value of such remainder interest. §§25.2511–2, 25.2522(c)–3. (Secs. 2511, 2522; '54 Code.)

Rev. Rul. 79–243, 1979–2 C.B. 343.

112.111 Trust remainder; widow's allowance; split interest. The portion of a residuary bequest that is certain to be received by a charitable beneficiary is not considered to be a split interest for purposes of section 2055(e), even though a temporary allowance for the surviving spouse is payable from the residuary property. Rev. Rul. 74–97 clarified. §§20.2055–1, 20.2056(b)–1. (Secs. 2055, 2056; '54 Code.)

Rev. Rul. 83–20, 1983–1 C.B. 231.

112.112 Trust remainder or income; split-interest; value. Expanded guidelines are provided for settling cases governed by section 2055 of the Code prior to the Tax Reform Act of 1969 involving a charitable deduction for an income or remainder interest in a split-interest trust whose trustee is permitted to exercise administrative or investment powers that may render the value of the interest in the trust ascertainable. Rev. Proc. 73–9 superseded. §20.2055–2. (Sec. 601.105, S.P.R.; Sec. 2055, '54 Code.).

Rev. Prov. 74–6, 1974–1 C.B. 417.

112.113 Universities; fraternity houses. All bequests, devises, legacies, and transfers to a college for the purpose of acquiring a housing facility for use by a designated fraternity, under certain terms and conditions, will be deductible from the gross estates of decedents.§§20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 60–367, 1960–2 C.B. 73.

112.114 Valuation; bequest based on adjusted gross estate. The amount of the allowable deduction with respect to a charitable bequest of 25 percent of a decedent's adjusted gross estate is determined by valuing the decedent's adjusted gross estate as of the alternate valuation date where the executor elects to use the alternate method of valuation.§§20.2032–1, 20.2055–1. (Secs. 2032, 2055; '54 Code.)

Rev. Rul. 70–527, 1970–2 C.B. 193.

112.115 Valuation; imminent death of transferee. The actuarial tables set forth in the regulations may be disregarded in valuing annuities, life estates, terms for years, remainders, and reversions for estate and gift tax purposes only if the individual is known to have been afflicted, at the time of transfer, with an incurable physical condition that is in such an advanced stage that death is clearly imminent. Rev. Rul. 66–307 clarified. §§20.2013–4, 20.2031–10, 20.2037–1, 20.2042–1, 20.2055–2, 25.2512–9, 25.2522(c)–3. (Secs. 2013, 2031, 2037, 2042, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 80–80, 1980–1 C.B. 194.

112.116 Veteran's personal property passing to U.S. The value of a deceased veteran's personal property that passes to the U.S. pursuant to 38 U.S.C. 5220 is not deductible from the decedent's estate as a pledge under section 20.2053–5 of the regulations in a situation where the veteran was not competent to enter into a contract at any time while in a V.A. hospital, but is deductible as a liability imposed by law. §20.2053–4. (Sec. 2053, '54 Code.)

Rev. Rul. 76–542, 1976–2 C.B. 282.

112.117 Veteran's personal property passing to U.S. as trustee. The value of personal property of a deceased veteran passing to the U.S. as trustee for the General Post Fund pursuant to the provisions of 38 U.S.C. 5220(a) is includible in the veteran's gross estate and is deductible in full as a claim against the estate for a charitable pledge. §§20.2033–1, 20.2053–5, 20.2055–1. (Secs. 2033, 2053, 2055; '54 Code.)

Rev. Rul. 75–553, 1975–2 C.B. 477.

112.118 War veterans' organization. Contributions to an organization, 90 percent of the membership of which is comprised of war veterans of the Armed Forces of the U.S., are deductible under section 2522. The fact that a small percentage of members have not served in a branch of the Armed Forces during wartime will not preclude the organization from being classified as a war veterans organization. §25.2522(a)–1. (Secs. 170, 2522; '54 Code.)

Rev. Rul. 84–140, 1984–39 I.R.B. 5.

112.119 Will contest; settlement by agreement. Where a charity is legatee under a will and, as such, contests the probate of a later will and such contest is settled by agreement with the parties in interest, the amount deductible for testamentary charitable gifts is calculated on the basis of what the charity actually received.§81.44. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Rev. Rul. 145, 1953–2 C.B. 273.

Claims

(See: ADMINISTRATIVE: Limitation period; Refunds and credits)

Claims against estate

114.1 Deduction for claims against the estate. A deduction will not be allowed for claims against the estate which have not been paid or will not be paid because the creditor waives payment, or fails to file his claim within the time limit and under the conditions prescribed by applicable local law, or otherwise fails to enforce payment. An exception is made in cases where the claim may be deemed to have been paid through the payment of a legacy in an amount at least equal to that of the claim.§§20.2013–5, 20.2053–4. (Secs. 2013, 2053, '54 Code.)

Rev. Rul. 60–247, 1960–2 C.B. 272.

114.2 Deduction for claims against the estate; Canada. The Canadian tax on capital gains on the deemed disposition of real property at decedent's death is not an inheritance, legacy, or estate tax for purposes of section 2014, therefore, a foreign death tax credit is not allowed for payment of the tax. However, a deduction in the amount of the tax is allowable under section 2053(a)(3) as a claim against the decedent's estate. §§20.2014–1, 20.2053–6. (Secs. 2014, 2053; '54 Code.)

Rev. Rul. 82–82, 1982–1 C.B. 127.

114.3 Deduction for claims informally presented; Florida. A valid but unprobated claim against a Florida decedent's estate, for which letters testamentary were issued before October 1, 1973, that was informally presented to the executor within the statutory period for presenting claims and paid with the approval of the beneficiaries is not deductible. §20.2053–4. (Sec. 2053, '54 Code.)

Rev. Rul. 75–177, 1975–1 C.B. 307.

114.4 Deduction for claims informally presented; Mississippi. A valid and enforceable claim against a Mississippi decedent's estate that was informally presented to the executor within the statutory period for presenting claims and paid with the approval of the beneficiaries is deductible. §20.2053–4. (Sec. 2053, '54 Code.)

Rev. Rul. 75–24, 1975–1 C.B. 306.

114.5 Deduction for widow's attorney's fees; determination by state court. In litigation relating to the ownership of certain property transferred to the decedent's widow by the decedent prior to his death, the state court approved a compromise agreement which required that the estate pay the widow's attorney's fees. *Held*, the attorney's fees may be deducted as; (1) administration expenses under section 2053, as being essential to proper settlement of the estate under reg. 20.2053–3(c)(3); (2) part of the cost of the executor's discharging his responsibility for collection of assets under reg. 20.2053–3 or; (3) as a settlement of a claim against the estate under section 2053. (Sec. 2053, '54 Code.)

Peter W. Reilly, 76 T.C. 369, Acq., 1981–2 C.B. 2.

114.6 Determination by State court. A claim against decedent's estate allowed by a New York Surrogate's Court with the consent of the adverse parties was allowed as a deductible claim against the estate. The Court's decision should generally be accepted as establishing the allowability of the claim under New York law. (Sec. 2053, '54 Code.)

Harry Britenstool, 46 T.C. 711, Nonacq., 1978–2 C.B. 3.

114.7 Escheat of veteran's funds to U.S. The value of a deceased veteran's funds derived from benefits payable under laws administered by the Veterans' Administration that escheat to the U.S. for lack of heirs pursuant to 38 U.S.C. section 3202(e) is includible in the decedent's gross estate under section 2033 and is allowable as a deduction under section 2053.§§20.2033–1, 20.2053–4. (Secs. 2033, 2053; '54 Code.)

Rev. Rul. 78–14, 1978–1 C.B. 281.

114.8 Foreign country; rate of exchange. In computing the amount deductible under section 2053, the rate of exchange to be used in determining the U.S. dollar value of administration expenses incurred in a foreign country is the rate in effect on the date the payment is made. The rate to be used in determining the value of foreign claims against the estate is the rate in effect on the date of death (or alternate valuation date), provided the claim is properly valued at that date. If postdeath events must be considered in valuing the claim, the rate on the date of payment is used in determining the value of the claim. §20.2053–1. (Sec. 2053, '54 Code.)

Rev. Rul. 80–260, 1980–2 C.B. 277.

114.9 Gift tax resulting from split gift. The entire gift tax paid by the executors with respect to gifts made by the decedent is deductible for estate tax purposes, even though the executors and the surviving spouse consented to treat the gifts as having been made one-half by each spouse.§81.37. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Rev. Rul. 55–334, 1955–1 C.B. 449.

114.10 Income tax deficiencies. Income tax deficiencies assessed against a decedent, due to the nonrecognition of a family partnership, are deductible from the decedent's gross estate in the full amount paid by the estate.§81.37. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Rev. Rul. 56–6, 1956–1 C.B. 660.

114.11 Indebtedness to daughter; bona fide. Decedent executed a codicil to his will in which he acknowledged a debt to his daughter for an amount which she had loaned to her brother in consideration for the father's promise to pay after his death. His executors reported the assumption of the debt as a gift on his gift tax return and deducted it as a claim against the estate on his estate tax return. *Held,* the decedent's obligation was not a device for making a testamentary gift to his daughter but was a claim against the estate contracted in good faith for an adequate and full consideration in money or money's worth and was deductible. (Sec. 2053, '54 Code.)

Charles L. Woody, 36 T.C. 900, Acq. in result, 1966–1 C.B. 3.

114.12 Indebtedness to minor children. The decedent's two minor children owned interests in certain business enterprises which made cash distributions to them. These funds were loaned to the decedent. He had executed demand notes to reflect them. *Held,* the demand notes were valid claims enforceable against the decedent's estate, where the minority of the children suspended the running of the statute of limitations on demand notes under the applicable state law. Such claims were deductible from the gross estate. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Charles B. Wolfe, 29 T.C. 441, Acq., 1958–2 C.B. 8.

114.13 Insurance proceeds paid to children under divorce decree. Life insurance proceeds paid to a decedent's minor children under a policy maintained pursuant to a divorce decree and property settlement agreement, which also provided for the spouse's surrender of support rights for a lump sum payment of equal value and child support payments consistent with the decedent's legal obligation, in a state in which such obligation ceases upon the parent's death, are not deductible from the decedent's gross estate. §20.2053–1. (Sec. 2053, '54 Code.)

Rev. Rul. 78–379, 1978–2 C.B. 238.

114.14 Insurance proceeds paid to divorced wife. Life insurance proceeds paid by the insurance company directly to a decedent's divorced wife are includible in and deductible from the estate of a decedent who, under the divorce decree, was required to name his wife as beneficiary of life insurance policies and was obligated to maintain the policies until her death or remarriage. Rev. Rul. 71–482 superseded. §20.2053–4. (Sec. 2053, '54 Code.)

Rev. Rul 76–113, 1976–1 C.B. 276; William E. Robinson, 63 T.C. 717, Acq., 1976–2 C.B. 2.

114.15 Last illness; community property; Arizona. The estate of a Arizona decedent, consisting entirely of community property, may deduct only one-half of the expenses of the last illness notwithstanding the fact that the decedent's will provided that these expenses were to be paid, in their entirety, out of the decedent's share of the community property.§20.2053–4. (Sec. 2053, '54 Code.)

Rev. Rul. 78–242, 1978–1 C.B. 292.

114.16 Medical expenses; deducted on final income tax return. The portion of a decedent's medical expenses, which are paid by a representative within one year following the decedent's death and claimed as a deduction on the decedent's final income tax return, that does not exceed three percent of adjusted gross income and is consequently not deductible under section 213 may not be deducted as a claim against the estate under section 2053.§20.2053–4. (Secs. 213, 2053; '54 Cpde.)

Rev. Rul. 77–357, 1977–2 C.B 328.

114.17 Mortgage balance; jointly held property. A decedent and the decedent's spouse each contributed cash toward the purchase of a residence as joint tenants with rights of survivorship and were jointly liable for a mortgage on the property, on which the decedent made all payments until death, after which the decedent's estate and spouse became jointly liable for the mortgage debt. Computations are shown of the amount includible in the decedent's gross estate under section 2040 and the amount deductible under section 2053 with respect to the mortgage indebtedness. §§20.2040–1, 20.2053–7. (Secs. 2040, 2053; '54 Code.)

Rev. Rul. 79–302, 1979–2 C.B. 328.

114.18 Mortgage guarantee; property transfer with retained life estate. Property in which a decedent retained a life estate is includible in the decedent's gross estate without an offset or deduction for a mortgage that was contracted for by the remainderman, even though the decedent was surety for the mortgage. §§20.2036–1, 20.2053–7. (Secs. 2036, 2053; '54 Code.)

Rev. Rul. 84–42, 1984–1 C.B. 194.

114.19 Notes payable to widow; limitation period; Pennsylvania. Where bona fide promissory demand notes, delivered by decedent to his wife in Pennsylvania more than 20 years before his death, remained unpaid during decedent's lifetime but were never openly denied by him, the amount of the widow's claim on such notes is deductible from the gross estate since in Pennsylvania the statute of limitations does not run on a wife's claim against her husband during coverture, in the absence of some overt act on the part of the husband.§20.2053–4. (Sec. 2053, '54 Code.)

Rev. Rul. 66–300, 1966–2 C.B. 437.

114.20 Payment in satisfaction of judgment resulting from collusive suit. No deduction is allowable under section 2053(a)(3) for a claim that is based upon a judgment resulting from a collusive law suit which was instituted by the decedent's child against the decedent before the decedent's death. §20.2053–1. (Sec. 2053, '54 Code.)

Rev. Rul. 83–54, 1983–1 C.B. 229.

114.21 Payments under antenuptial agreement. A payment made by the executors of a decedent's estate to the surviving spouse pursuant to her claim under an antenuptial agreement whereby she relinquished any marital rights she might acquire for a stated sum from the decedent's estate is considered as having "passed from the decedent to his surviving spouse" and qualifies for the marital deduction.§§20.2053–4, 20.2056(e)–1. (Secs. 2053, 2056; '54 Code.)

Rev. Rul. 68–271, 1968–1 C.B. 409.

114.22 Payments under divorce decree. The commuted value of periodic payments by an estate under a property settlement agreement incorporated in a divorce decree is deductible under section 2053(a)(3) as a claim against the estate. Thus, deduction by the estate for Federal income tax purposes, as distributions to a beneficiary under section 661, are not denied by section 642(g) of the Code.§20.2053–4. (Secs. 642, 661, 2053; '54 Code.)

Rev. Rul. 67–304, 1967–2 C.B. 224.

114.23 Payments under voluntary separation agreement. The commuted value of support payments due a decedent's wife for the release of her right to support and maintenance pursuant to a valid separate agreement entered into prior to the decedent's death is deductible by the estate as a claim based upon an adequate and full consideration in money or money's worth to the extent of the value of the postponed support rights.§20.2053–4. (Sec. 2053, '54 Code.)

Rev. Rul. 71–67, 1971–1 C.B. 271.

114.24 Priority. Claims against a decedent's estate for funeral and administrative expenses and a family allowance required to be paid by state law have priority over the tax claims of the government for which the government has no lien. However, such tax claims are superior to claims against the estate for doctor bills from the decedent's last illness and wages due a household employee. §301.6871(a)–2. (Sec. 6871, '54 Code.)

Rev. Rul. 80–112, 1980–1 C.B. 306.

114.25 Promissory note unsatisfied at death. The gratuitous transfer of a legally binding promissory note is a completed gift under section 2511. If the note has not been satisfied at the promisor's death, no deduction is allowable under section 2053(a)(3) for the promisee's claim with respect to the note. The completed gift is not treated as an adjusted taxable gift in computing the tentative estate tax under section 2001(b)(1). Rev. Rul. 67–396 clarified. §§20.2053–4, 25.2511–1, 25.2512–4. (Secs. 2001, 2053, 2511, 2512; '54 Code.)

Rev. Rul. 84–25, 1984–1 C.B. 191.

114.26 Property settlement agreement; addition to trust principal. Decedent created a testamentary trust, giving his former wife a life estate therein, and agreed that the value of any inter vivos transfers would be added to the trust principal. Later he made such transfers for the benefit of minor children born of a subsequent marriage. *Held,* the value of these transfers should be added to the net value of the trust for purposes of computing the life estate (which was a debt). (Sec. 2053, '54 Code.)

Harold Hartshorne, 48 T.C. 882, Acq., 1968–1 C.B. 2.

114.27 Real property tax liens; Iowa. Property taxes in Iowa, which become a lien on the assessed property when levied each September, constitute an indebtedness in respect of such property, and the value of real property located in Iowa which is included in a decedent's gross estate should reflect a reduction for the tax liens thereon at the time of his death, although such liens cannot be deducted as claims against the estate because they are not, under Iowa law, personal obligations of the landowner.§20.2053–6. (Sec. 2053, '54 Code.)

Rev. Rul. 66–211, 1966–2 C.B. 439.

114.28 Refinanced mortgage balance outstanding; jointly held property. A decedent and the decedent's spouse each contributed cash toward the purchase of a residence as joint tenants with rights of survivorship and were jointly liable for a mortgage on the property, on which the decedent made all payments. The mortgage was refinanced and both the decedent and the decedent's spouse made payments. Upon the decedent's death, the estate and the spouse became jointly liable for the mortgage debt. Computations are shown for the amount includible in the decedent's gross estate under section 2040 and the amount deductible under section 2053 with respect to the refinanced mortgage indebtedness. §§20.2040-1, 20.2053-7. (Secs. 2040, 2053, '54 Code.)

Rev. Rul. 81-184, 1981-2 C.B. 181.

114.29 Reimbursement for estate taxes. The executors of the decedent's estate made a payment to the estate of the decedent's wife to reimburse the wife's estate for estate taxes paid on jointly owned personal property which passed to the decedent upon the death of his wife. Under State law the decedent was obligated to reimburse his wife's estate for such taxes. Part of the payment to the wife's estate was attributable to items which had passed to the decedent upon his wife's death but had been given away before his death so that they were not included in his gross estate. *Held*, the decedent's estate was entitled to a deduction for that portion of the payment which was attributable to items of property disposed of before the decedent's death. (Sec. 812, '39 Code; Sec. 2051, '54 Code.)

William Church Osborn, 28 T.C. 82, Acq., 1957-2 C.B. 6.

114.30 Second mortgage; jointly held residence. A decedent and the decedent's spouse each contributed cash toward the purchase of a residence as joint tenants with rights of survivorship and were jointly liable for a mortgage on the property on which the decedent made all payments. A second mortgage was obtained on which the spouse made all the payments. Upon the decedent's death, the estate and the spouse became jointly liable for the mortgage debt with rights of contribution. Computations are shown for the amount includible in the decedent's gross estate under section 2040 and the amount deductible under section 2053 with respect to the mortgage indebtedness when the proceeds of the second mortgage were used either to make improvements to the residence or for purposes not related to the real estate. §§20.2040-1, 20.2053-7. (Secs. 2040, 2053, '54 Code.)

Rev. Rul. 81-183, 1981-2 C.B. 180.

114.31 Settlement agreement incorporated in divorce decree. The decedent and his wife entered into a separation agreement which was not contingent upon a divorce being granted. Under the agreement the wife released her dower rights but became entitled to one-third of the decedent's net estate upon his death. Subsequently, the parties were divorced and the divorce decree incorporated the separation agreement. Upon the death of the decedent, the wife made a claim against the estate which was recognized and paid by the estate. *Held*, the estate was entitled to a deduction for the amounts paid to the wife. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Myles C. Watson, 20 T.C. 386, Acq., 1958-2 C.B. 8.

114.32 Settlement agreement incorporated in divorce decree. The debt of a decedent founded on the surrender of marital right incurred under a separation agreement, which State law bound the court to incorporate in the divorce decree, is not deductible under section 2053(a)(3). §§20.2043-1, 20.2053-4. (Secs. 2043, 2053; '54 Code.)

Rev. Rul. 75-395, 1975-2 C.B. 370.

114.33 Settlement powers vested in divorce court. If a divorce court has power to decree a settlement of all property rights or to vary the terms of a prior settlement agreement, and does approve the agreement, any indebtedness arising out of such settlement is not considered to be founded on a promise or agreement; rather, it is considered to be founded upon such court decree and is, therefore, deductible from gross estate. E.T. 19 modified.§§20.2043-1, 20.2053-4. (Secs. 2043, 2053; '54 Code.)

Rev. Rul. 60-160, 1960-1 C.B. 374.

114.34 Spouse's services rendered to decedent's business. A claim by a decedent's spouse against the estate for compensation for noncontractual services rendered to the decedent's separately owned business in a jurisdiction in which the claim is unenforceable under local law in the absence of a bona fide agreement between the spouses is not deductible. §20.2053-4. (Sec. 2053, '54 Code.)

Rev. Rul. 78-271, 1978-2 C.B. 239.

114.35 State gift tax paid. A state gift tax paid by a donor on a transfer later included in the donor's state inheritance tax base, and regarded as an advance payment of state inheritance tax, does not create an asset of the estate for purposes of section 2033 and is not includible in the decedent's gross estate at death. A credit under section 2011 is not allowable for any amount of inheritance tax considered paid by a credit of state gift tax paid before death. A state gift tax unpaid at death, which gives rise to a credit against the state inheritance tax when paid, is not allowable as a credit under section 2011, but is deductible as a claim against the estate under section 2053. Rev. Ruls. 71-355 and 75-63 revoked. §§20.2011-1, 20.2033-1, 20.2053-6. (Secs. 2011, 2033, 2053; '54 Code.)

Rev. Rul. 81-302, 1981-2 C.B. 170; Grace E. Lang, 64 T.C. 404, Acq., 1981-2 C.B. 2; George E. P. Gamble, 69 T.C. 942, Acq., 1981-2 C.B. 1.

114.36 Unpaid mortgage; farm; special use value. A mortgage for which the decedent's estate is liable is fully deductible under section 2053 if all of the secured property is included in the gross estate, even though the property has been valued in a section 2032A election. §§2032A-3, 20.2053-7. (Secs. 2032A, 2053 '54 Code.)

Rev. Rul. 83-81, 1983-1 C.B. 230.

114.37 Unpaid rent; leaseback of farm transferred to children. Decedent and spouse conveyed their farm to their adult children by deed of gift. Contemporaneously, the children leased the farm back to them for a fractional share of the crops. Decedent opened a savings account for each child, naming himself trustee, and deposited to each account a share of the income as rent for 1957 and 1958. In 1959, decedent was seriously injured and two of the children were having family problems; therefore, the rent from 1959 through 1963 was not paid. Subsequent to decedent's death, the children filed claims against the estate for back rentals which were ultimately paid. In a timely filed estate tax return, deductions were claimed for debts to the children for unpaid rent for 1959 through 1963. *Held*, the farm land is not includible in decedent's estate under section 2036 of the Code and since decedent owed unpaid rent at the time of his death, the estate is entitled to the deduction. (Sec. 2053, '54 Code.)

Roy D. Barlow, 55 T.C. 666, Acq., 1972-2 C.B. 1.

Closing agreements
(See: ADMINISTRATIVE)

Collection of tax
(See: ADMINISTRATIVE)

Community property

116.1 Administration expenses; surviving spouse. That portion of expenses paid or incurred in the administration of a community estate allowed by the laws of the jurisdiction under which the estate is being administered, which are not deductible by the estate of the decedent because paid or incurred in respect of the share of the community property belonging to the surviving spouse, may be deducted by the surviving spouse in her individual income tax return.§81.32. (Secs. 23(a), 812(b), '39 Code; Sec. 2051, '54 Code.)

Rev. Rul. 55-524, 1955-2 C.B. 535.

116.2 Annuities; Federal employee. State community property laws do not apply to annuities, death benefits, or refunds payable under the Civil Service Retirement Act. The full value of retirement contributions, plus the accrued interest thereon, is includible in the gross estate of a Federal civil service employee. Distinguished by Rev. Rul. 63-168. (Sec. 2039, '54 Code.)

Rev. Rul. 57-446, 1957-2 C.B. 619.

116.3 Annuities; Judicial Retirement System of Texas. One-half the value of a survivorship annuity receivable under the Judicial Retirement System of Texas is includible in a decedent's gross estate as paid under contract. §20.2039-1. (Sec. 2039, '54 Code.)

Rev. Rul. 75-505, 1975-2 C.B. 364.

116.4 Closely-held business; installment payment of tax; election. Attorney's fees were incurred in connection with contesting the inclusion in the decedent's gross estate of certain items of property not subject to claims. The contest involved proceedings in the Tax Court of the United States. The fees were paid 60 days after the Tax Court decision became final, but more than three years after the tax return was filed. Such attorney's fees constitute an allowable deduction. Clarified by Rev. Rul. 78-323. §20.2053-8. (Sec. 2053, '54 Code.)

Rev. Rul. 61-59, 1961-1 C.B. 418.

116.5 Computation of marital deduction. The adjusted gross estate, in cases involving community property, is determined by subtracting from the value of the entire gross estate the sum of all community property and an amount that bears the same ratio to the aggregate of the deductions allowed under sections 2053 and 2054, irrespective of specific characterization, that the value of all of the noncommunity property bears to the entire gross estate. §20.2056(c)-2. (Sec. 2056, '54 Code.)

Rev. Rul. 76-349, 1976-2 C.B. 297.

116.6 Converted to separate property; marital deduction. Income from community property which had been converted to separate property after December 31, 1941, as well as property acquired or derived from such income, constitutes separate property for the purpose of computing the adjusted gross estate when so designated by the applicable local property law.§20.2056(c)-2. (Sec. 2056, '54 Code.)

Rev. Rul. 67-171, 1967-1 C.B. 274.

116.7 Converted to separate property; marital deduction. A decedent's separate property converted from community property when he was divorced from his surviving spouse whom he later remarried is treated as community property in computing the adjusted gross estate under section 2056(c)(2)(B) of the Code for purposes of determining the allowable marital deduction. §20.2056(c)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 73–309, 1973–2 C.B. 319.

116.8 Converted to separate property; marital deduction. Income derived from a decedent's separate property that was converted from community property by a decedent and the decedent's spouse upon moving to a common law state constitutes separate property for the purpose of computing the adjusted gross estate under section 2056. §20.2056(c)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 78–391, 1978–2 C.B. 245.

116.9 Decedent's interest; converted to property in common law state. A decedent and the decedent's spouse sold jointly held property that had been acquired while they resided in a community property state and with the proceeds purchased property in a common law state where they had recently moved. One-half of the value of the property held jointly at the decedent's death is excluded from the decedent's gross estate under section 2040. §20.2040–1. (Sec. 2040, '54 Code.)

Rev. Rul. 78–418, 1978–2 C.B. 236.

116.10 Decedent's interest; separate property; Texas. Separate property under Texas community property law that a decedent transferred to the spouse prior to death and which was held by the spouse as separate property, is not includible in the decedent's gross estate. Rev. Rul. 75–504 revoked. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 81–221, 1981–2 C.B. 178.

116.11 Expenses of last illness; Arizona. The estate of an Arizona decedent, consisting entirely of community property, may deduct only one-half of the expenses of the last illness notwithstanding the fact that the decedent's will provided that these expenses were to be paid, in their entirety, out of the decedent's share of the community property.§20.2053–4. (Sec. 2053, '54 Code.)

Rev. Rul. 78–242, 1978–1 C.B. 292.

116.12 Gift in contemplation of death of spouse. Where, under the laws of a community property state, the husband as the managing member of the community, may give property to third persons, the value of one-half of any gifts made in contemplation of the wife's death is includible in her gross estate. (Sec. 2035, '54 Code.)

Rev. Rul. 56–408, 1956–2 C.B. 600.

116.13 Interest in profit-sharing trust. Where the vested interest of a surviving spouse in a plan which meets the requirements of section 401(a) was community property, the value of the predeceased wife's community property interest therein is includible in gross estate under section 2033 and that interest is not subject to exclusion under section 2039(c) of the Code.§§20.2033–1, 20.2039–2. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 67–278, 1967–2 C.B. 323.

116.14 Interest of intestate Texas decedent. A father, who died intestate and domiciled in Texas, had acquired stock which he caused to be issued in his and his wife's names as joint tenants with right of survivorship and not as tenants in common. There was no administration of the father's estate; and the mother, who later died testate and devised her estate to her son, had the stock issued in her name and received all dividends paid thereon pursuant to an oral understanding with the son.As his mother's executor, the son included only one-half of the stock in the estate return, claiming that the stock was community property and that he had acquired a one-half interest in it by reason of the Texas statute of descent and distribution. *Held*, (1) the issuance of the stock as such did not, under Texas community property law, prevent one-half ownership thereof from vesting in the son (the heir at law) upon his father's death; and (2) one-half of the stock's value was at all times the son's property and not includible in his mother's gross estate. (Sec. 2033, '54 Code.)

Gertrude M. Chaddock, 54 T.C. 1667, Acq., 1970–2 C.B. xix.

116.15 Interest of surviving spouse; Texas. A husband, a resident of Texas, made a testamentary devise to his wife and two children of his entire separate estate and the entire community estate owned by himself and his wife. The wife, pursuant to an election contained in her deceased husband's will, chose to take under the will. *Held*, the value of the wife's interest in the community estate is not a part of the husband's gross estate notwithstanding her election to take under the will. G.C.M. 7773 superseded.§20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 67–383, 1967–2 C.B. 325.

116.16 Life insurance; Louisiana. Treatment of policies and the proceeds therefrom under the community property laws of Louisiana where the insured at death possessed incidents of ownership in the policies which had been taken out by him is set forth. The premium payments were made entirely with separate funds of either spouse, with separate funds of both spouses, combined, entirely with community funds, or in part with the separate funds of the insured and in part with community funds. The beneficiary is (1) anyone other than the insured's estate or surviving spouse, (2) the surviving spouse, or (3) the insured's estate.§§81.26, 81.27, 81.36, 81.47(a), 86.2. (Secs. 811(g), 812(b), and (e), 1000, '39 Code; Secs. 2042, 2051, 2056, 2511, '54 Code.)

Rev. Rul. 232, 1953–2 C.B. 268.

116.17 Life insurance; Louisiana. A Louisiana resident was the owner-beneficiary of insurance policies on the life of the individual's spouse. Premiums were paid with community funds, and the owner retained the right to change the beneficiary. The policies were the separate property of the owner-beneficiary, and, upon the death of the insured, no portion of the proceeds was includible in the insured's gross estate. (Sec. 2042, '54 Code.)

Viola F. Saia, 61 T.C. 515, Nonacq., 1978–2 C.B. 4.

116.18 Life insurance; Louisiana and Texas. In Louisiana or Texas a married man who purchases life insurance in favor of a beneficiary other than his estate possesses incidents of ownership in the policy, one-half in his own right and one-half as agent of his wife. Upon death, one-half of the proceeds of the policy is includible in his gross estate and the remaining one-half becomes an absolute gift by the wife. If the wife predeceases the husband, one-half value of the policy is includible in her gross estate as her interest in a community asset or as a revocable transfer. Modified by Rev. Rul. 75–100 to remove the implication that one-half the "cash surrender value" is the includible "value of the policy" at the date of the death of the uninsured spouse.§§81.20, 81.27, 86.2. (Secs. 811(g), 1000, '39 Code; Secs. 2042, 2511, '54 Code.)

Rev. Rul. 48, 1953–1 C.B. 392.

116.19 Life insurance; National Service Life Insurance; marital deduction. The proceeds of a National Service Life Insurance policy, payable to the widow of a decedent who had paid the initial premiums from his separate funds while a resident of a common law State and all subsequent premiums from community funds while a resident of a community property State, are not community property and their full value is includible in the decedent's gross estate. The value of such proceeds qualifies for the marital deduction under section 2056(a) of the Code, and no amount need be subtracted by reason of section 2056(c)(2)(B)(iii) in computing the limitation of the marital deduction.§20.2056(c)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 74–312, 1974–2 C.B. 320.

116.20 Life insurance; Texas. Where an insured domiciled in Texas takes out a policy of life insurance, one premium being paid out of the insured's separate funds before marriage and the balance ofthe premiums paid out of community funds, the policy constitutes the separate property of the insured and the proceeds are includible in his gross estate; however, a claim by the community for reimbursement for premiums paid with community funds against the insured's estate may be allowed. Modified by Rev. Rul. 80–242 §§81.26, 81.27, 81.36, 81.47(a). (Secs. 811(g), 812(b), 812(e), '39 Code; Secs. 2042, 2051, 2056, '54 Code.)

Rev. Rul. 54–272, 1954–2 C.B. 298.

116.21 Life insurance; Texas. A decedent who was a resident of Texas obtained an insurance policy on the decedent's life prior to marriage, paid a portion of the premiums from separate funds and a portion from community funds, and designated the decedent's spouse as beneficiary. The amount includible in the decedent's gross estate with respect to the insurance policy is reduced by one-half the amount of premiums paid with community funds. §§20.2033–1, 20.2042–1. (Secs. 2033, 2042; '54 Code.)

Rev. Rul. 80–242, 1980–2 C.B. 276.

116.22 Life insurance; Texas. Where a husband and wife domiciled in Texas purchased concurrently with community funds substantially identical policies of life insurance on the life of each other, each naming the other as owner and beneficiary, the presumption under Texas law that the policies are community property will prevail unless it is clearly shown that gifts were intended. As community property, one-half of the insurance proceeds from the policy on the life of the husband upon his death is includible in his gross estate under section 2042. Furthermore, one-half of the value of the policy on the life of the wife is includible in his gross estate under section 2033 of the Code.§§20.2033–1, 20.2042–1. (Secs. 2033, 2042; '54 Code.)

Rev. Rul. 67–228, 1967–2 C.B. 325.

116.23 Life insurance; Texas. A Texas-resident husband and wife had owned for some time, as community property, an ordinary life insurance policy on the husband's life designating their children as beneficiaries. The wife predeceased her husband by 10 days, her entire estate was bequeathed to the children, and there was no settlement of her interest in the policy prior to the husband's death. The amount includible in the wife's gross estate is one-half the value of the policy, on the date of her death, determined by the terminal-reserve method under section 20.2031–8(a)(2) of the regulations and one-half the value of the policy proceeds is includible in the husband's gross estate. Rev. Rul. 48 modified. §§20.2031–8, 20.2033–1, 20.2042–1. (Secs. 2031, 2033, 2042; '54 Code.)

Rev. Rul. 75–100, 1975–1 C.B. 303.

116.24 Life insurance; Texas; simultaneous deaths. A husband and wife who were residents of Texas owned an insurance policy on the life of one of the spouses as community property. Their designation of a child as beneficiary of the policy was revocable prior to death. They died simultaneously in 1977. One-half the policy proceeds is includible in the gross estate of each spouse. §20.2042–1. (Secs. 2035, 2038, 2042; '54 Code.)

Rev. Rul. 79–303, 1979–2 C.B. 332.

116.25 Life insurance; veteran's policy. The proceeds of life insurance policies issued under the World War Veterans' Act of 1924, the National Service Life Insurance Act of 1940, and the Servicemen's Indemnity Act of 1951 are not subject to the community property laws of any State. Accordingly, the full value of the proceeds of such insurance is includible in the deceased veteran's gross estate. (Sec. 2042, '54 Code.)

Rev. Rul. 55–622, 1955–2 C.B. 385; Rev. Rul. 56–603, 1956-2 C.B. 601.

116.26 Realty; nonresident and citizen of Norway. The gross estate of a decedent citizen and resident of Norway includes only one-half of the value of real property located in a State that recognizes the vested interest of the spouse in Norwegian community funds used to purchase the property in the decedent's name. §§20.2033–1, 20.2103–1. (Secs. 2033, 2103; '54 Code.)

Rev. Rul. 72–443, 1972–2 C.B. 531.

116.27 Situs of realty. Where a married man domiciled in Texas purchases, in his own name and with community funds acquired in Texas, real property located in New Mexico and Kansas and predeceases his wife, only one-half of the value of such property is includible in his gross estate in accordance with the respective interests of the husband and wife in such property under the laws of the state where the property is located.§81.13. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 54–89, 1954–1 C.B. 181.

116.28 Transfer to spouse; retained income interest. Decedent transferred a community property interest in municipal bonds to the decedent's spouse in a state whose law provides that income from separate property is community property. Even though, after the transfer, decedent was entitled to one-half the income from all the bonds, only one-half the transferred interest (one-fourth of the value of the bonds) was a transfer with a retained life estate within the meaning of section 2036(a)(1) and includible in decedent's gross estate. (Sec. 2036, '54 Code.)

Winston C. Castleberry, 68 T.C. 682, Nonacq., 1978–2 C.B. 3.

116.29 Transferred to revocable trust. Husband and wife transferred their California community property to a revocable trust, reserving to themselves a life income interest therein. Upon the death of one of the spouses, one-half of the value of the community interest in the property held in the trust is includible in determining the value of the decedent's gross estate.§§20.2033–1, 20.2036–1, 20.2038–1. (Secs. 2033, 2036, 2038; '54 Code.)

Rev. Rul. 66–283, 1966–2 C.B. 297.

116.30 Wife's interest; devised by husband with consent. The decedent's husband executed his will to dispose of not only his share but also his wife's share of community property and therein bequeathed and devised certain parcels of real property to his daughter. The decedent, simultaneously with the execution of her husband's will, executed a document consenting and electing to be bound by his will. *Held*, the decedent having executed a "consent" simultaneously with the execution of her husband's will was irrevocably bound by this consent and the effect of the decedent's election was to have her interest in community property pass to her daughter as a gift on the date of her husband's death. Furthermore, the decedent's estate is entitled to a deduction for the gift tax liability as well as a credit for the gift tax. (Secs. 2012, 2033; '54 Code.)

Emma Bressani, 45 T.C. 373, Acq., 1966–2 C.B. 4.

116.31 Wife's interest; Nevada. The interest of the wife in community property constitutes a vested interest under the laws of Nevada. Therefore, the value of one-half of the community property and one-half of the jointly owned property acquired with community funds is includible in her gross estate. (Sec. 2033, '54 Code.)

Rev. Rul. 55–605, 1955–2 C.B. 382.

116.32 Wife's interest; New Mexico. As a result of changes in New Mexico law that equalized the community property interest of each spouse, the value of a wife's one-half interest in New Mexico community property is includible in her gross estate if she predeceases her husband after June 30, 1973.§20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 74–284, 1974–1 C.B. 276.

Compromises

(See: ADMINISTRATIVE: Offers in compromise)

Computation of tax

(See: ADMINISTRATIVE)

Conferences

(See: ADMINISTRATIVE: Appeals)

Consideration

(See: Transfers)

Contemplation of death

(See: Transfers)

Court decisions

(See specific subject headings)

Credits against tax

(See also: ADMINISTRATIVE: Refunds and credits)

118.1 Foreign death tax credit; rate of exchange. In computing the foreign death tax credit allowed under section 2014, the rate of exchange used to convert foreign death tax payments into U.S. dollars is the rate in effect at the time each foreign tax payment is made. §20.2014–2. (Sec. 2014, '54 Code.)

Rev. Rul. 75–439, 1975–2 C.B. 359.

118.2 Foreign death taxes; Canada. The Canadian tax on capital gains on the deemed disposition of real property at decedent's death is not an inheritance, legacy, or estate tax for purposes of section 2014, therefore, a foreign death tax credit is not allowed for payment of the tax. However, a deduction in the amount of the tax is allowable under section 2053(a)(3) as a claim against the decedent's estate. §§20.2014–1, 20.2053–6. (Secs. 2014, 2053; '54 Code.)

Rev. Rul. 82–82, 1982–1 C.B. 127.

118.3 Foreign taxes; Alberta, Canada; rebate. Death tax rebates received from the Canadian Province of Alberta by the estate of a U.S. citizen decedent, domiciled at death in Alberta, are considered a "reduction" of the Canadian estate tax within the meaning of Article V of the U.S. Canada Death Tax Convention of 1962 for purposes of determining the credit allowable for Canadian death taxes.§20.2014–4. (Sec. 2014, '54 Code.)

Rev. Rul. 73–240, 1973–1 C.B. 399.

118.4 Foreign taxes; evidence of payment. Form 706CE, Certification of Payment of Foreign Death Duty, has been issued for use in evidencing the payment of foreign death taxes in all cases where credit therefor, whether pursuant to the Internal Revenue Code or any death duty convention, is claimed against the Federal estate tax. Mims. 5872 and 6117 modified.§81.9. (Secs. 813(c), 936(c), '39 Code; Sec. 2014, '54 Code.)

Rev. Rul. 54–169, 1954–1 C.B. 198.

118.5 Foreign taxes; Ontario, Canada. Foreign death taxes paid to the Province of Ontario by estates of decedents dying after November 13, 1966, are allowable as a credit against Federal estate tax in the absence of a Presidential proclamation to the contrary. Rev. Rul. 55–381 modified to limit its applicability to estates of decedents dying before November 14, 1966.§20.2014–1. (Sec. 2014, '54 Code.)

Rev. Rul. 72–6, 1972–1 C.B. 306.

118.6 Foreign taxes; Ontario, Canada. The Province of Ontario, Canada, does not meet the reciprocal credit requirement of the foreign death tax credit provisions. Accordingly, the estate of a deceased citizen of Canada who at the time of death was domiciled in the U.S. will not be entitled to credit for any estate, inheritance, legacy, or succession duties paid to the Province of Ontario. Modified by Rev. Rul. 72–6.§81.9. (Secs. 813(c), 936(c), '39 Code; Sec. 2014, '54 Code.)

Rev. Rul. 55–381, 1955–1 C.B. 464.

118.7 Gift tax; computation. Decedent's estate was entitled to a gift tax credit under sections 813(a)(2) and 936(b) of the Code because he had paid gift tax in 1936 and 1937 on property later held includible in the gross estate. *Held*, a separate credit should not be determined for each year, but both years should be combined and the credit determined based on the total value of the gift property includible in the gross estate, limited by the total amount of gift tax paid with respect to such property. (Secs. 813(a), 936(b), '39 Code; Secs. 2012, 2014, '54 Code.)

Milton J. Budlong, 7 T.C. 756, 8 T.C. 284, Acq. withdrawn and Nonacq. substituted, 1964–2 C.B. 8.

118.8 Gift tax; interrelated with credit for tax on prior transfers. The computation of the gift tax credit applicable to an estate where a credit for tax on prior transfers is allowable requires a computation of a hypothetical gift tax credit which is made on the basis of the transferee-decedent's reduced gross estate. Examples are provided for computing the credits in determining the net Federal estate tax. §§20.2012–1, 20.2013–1. (Secs. 2012, 2013; '54 Code.)

Rev. Rul. 67–110, 1967–1 C.B. 262.

118.9 Gift tax; inter vivos transfer; reacquistion. No gift tax credit is allowable for gift taxes paid by the donor-decedent on inter vivos gifts of property subsequently reacquired by purchase, bequest, or the death of a joint tenant. §20.2012–1. (Sec. 2012, '54 Code.)

Rev. Rul. 76–470, 1976–2 C.B. 259.

118.10 Gift tax; payment of tax; Treasury bonds. The maximum combined value of eligible Treasury bonds that may be redeemed for the purpose of paying the estate's Federal estate tax liability is an amount equal to the net Federal estate tax due after all applicable credits, including the credit for Federal gift taxes paid, have been subtracted from the amount of tax imposed. §§20.2001–1, 20.2012–1. (Secs. 2001, 2012; '54 Code.)

Rev. Rul. 76–367, 1976–2 C.B. 259.

118.11 Gift tax; reciprocal transfer in trust. The appreciated value of a reciprocal trust established by a wife with an initial value of $300,000 was included in her husband's estate, and three-fourths of the appreciated value of the reciprocal trust established by the husband with an initial value of $400,000 was included in her estate. The credit allowed on the husband's estate tax return for gift taxes on the initial transfer to the trust is the full amount of the gift tax paid by the wife, and the credit allowed on the wife's return is three-fourths of the gift tax paid by the husband.§20.2012–1. (Sec. 2012, '54 Code.)

Rev. Rul. 74–533, 1974–2 C.B. 593.

118.12 Gift tax; "second limitation". Where a decedent transferred inter vivos a remainder interest which is subsequently included in his gross estate, the value of the gift for purposes of the ratio provided by section 2012 of the Code is the value of the gift at the date of the transfer or at the date of death, whichever is lower. In order to compute the value of such an interest for purposes of the "second limitation," the amount of the entire property transferred at the date of the transfer by gift or at the date of death, whichever is lower, is multiplied by the actuarial factor which represents the present worth at the time of his gift of the remainder interest transferred by the donor-decedent. Clarified by Rev. Rul. 74–491.§20.2012–1. (Sec. 2012, '54 Code.)

Rev. Rul. 67–319, 1967–2 C.B. 319.

118.13 Gift tax; "second limitation;" donee other than spouse. For the purpose of computing the "second limitation" of the credit for gift tax, the value of the gift made to a donee other than the decedent's spouse is not reduced under section 2012(b)(2) by the additional marital deduction that results from inclusion of the gift in the gross estate. §§20.2012–1, 20.2056(a)–1. (Secs. 2012, 2056; '54 Code.)

Rev. Rul. 80–185, 1980–2 C.B. 395.

118.14 Gift tax; "second limitation"; "value of gift"; charitable remainder unitrust. For purposes of the "second limitation" on the amount or credit allowable for the gift tax paid upon the establishment of inter vivos charitable remainder unitrusts, which provided that the unitrust amounts were payable to the donor-decedent for life and then to a survivor for life, factor "G", "the value of gift," under section 20.2012–1(d)(2) of the regulations is the lower value of the gift property included in the gross estate, at the date of transfer or the date of death, less such value multiplied by the ratio of the allowable estate tax charitable deduction resulting from such unitrust's remainder interest to the total value of such unitrust at death. Rev. Rul. 67–319 clarified.§20.2012–1. (Sec. 2012, '54 Code.)

Rev. Rul. 74–491, 1974–2 C.B. 290.

118.15 Gift tax; tenants by the entirety. The gift tax paid by a decedent on the transfer, in contemplation of death and without consideration, of real property that was purchased with separate funds and titled to the decedent and his or her spouse as tenants by the entirety is divided equally between the decedent's estate and the spouse's estate for purposes of computing the credit allowable, even though decedent paid no gift tax at the time the property was purchased. §20.2012–1. (Sec. 2012, '54 Code.)

Rev. Rul. 76–471, 1976–2 C.B. 260.

118.16 Gift tax; transfer in contemplation of death; paid by donee. A decedent's estate is entitled to a credit for gift taxes paid by the donee, decedent's son, on a gift later included in decedent's gross estate as a transfer made in contemplation of death.§20.2012–1. (Sec. 2012, '54 Code.)

Rev. Rul. 74–363, 1974–2 C.B. 217.

118.17 Gift tax; transfer in contemplation of death; paid by husband and wife. Prior to his death, decedent and his wife transferred to a trust property owned by them as tenants by the entirety, but for which the wife contributed no part of the cost of acquisition. Decedent and his wife retained a life interest in a portion of the trust income and their children were beneficiaries to the balance of the life interest and the remainder. Upon the husband's death within two years of the transfer, the value of the property transferred was included in his gross estate as a gift in contemplation of death. A credit was claimed for the entire gift tax paid with respect to the transfer which was paid in part by the decedent and in part by the wife. *Held*, the decedent's estate is entitled to the entire credit notwithstanding that a portion of the gift tax was paid by the wife. (Sec. 2012, '54 Code.)

William MacPherson Hornor, 44 B.T.A. 1136, Nonacq. withdrawn and Acq. substituted, 1974–2 C.B. 3.

118.18 Inheritance taxes; contingent refund provision. An inheritance tax was paid to the State of Ohio pursuant to state law which provides for a proportionate refund if, upon final determination of succession to property in the estate, any part of such payment was found to be excessive. *Held*, the tax was "actually paid" even though part of it might be returned at a later date. Accordingly, the full amount paid qualified for the credit against the basic estate tax. (Sec. 813(b), '39 Code; Sec. 2011, '54 Code.)

Allen L. Weisberger, 29 T.C. 217, Acq., 1958–2 C.B. 8.

118.19 Inheritance taxes; imposed by two States. Full credit will be allowed against the Federal estate tax, subject to the overall limitations of section 2011 of the Code, for the payments of death taxes imposed upon an estate by two States, where each of the taxing agencies claims jurisdiction upon the basis of domicile. Mim. 3971 amplified; Rev. Rul. 56–230 distinguished.§20.2011–1. (Sec. 2011, '54 Code.)

Rev. Rul. 60–88, 1960–1 C.B. 365.

118.20 Inheritance taxes; imposed by two States. The total amount of inheritance taxes properly paid in respect of shares of stock to the State wherein the decedent was domiciled at the time of death and also to the State which has extended benefits and protection to the property will be used in calculating the State death tax credit.§20.2011–1. (Sec. 2011, '54 Code.)

Rev. Rul. 70–272, 1970–1 C.B. 187.

118.21 Inheritance taxes; interest on refund. Where refunds of Federal estate tax are made in cases involving credit for State inheritance taxes, a refund based entirely on credit for State inheritance taxes will be made without interest, a refund based partially on credit for State inheritance taxes and partially on other adjustments will bear interest only on that portion of the refund attributable to other adjustments other than the credit for State inheritance taxes, and a refund based entirely on adjustments other than credit for State inheritance taxes will bear interest on the entire amount of the refund. Rev. Rul. 55–69 superseded.§§81.9, 20.2011–1. (Sec. 813(b), '39 Code; Sec. 2011, '54 Code.)

Rev. Rul. 61–58, 1961–1 C.B. 414.

118.22 Inheritance taxes; interest on refund. A decedent's estate is not entitled to a refund of the interest paid on a deficiency that is later reduced by the allowance of a state death tax credit under section 2011(a). §§20.2011–1, 301.6601–1, 301.6611–1. (Secs. 2011, 6601, 6611; '54 Code.)

Rev. Rul. 79–219, 1979–2 C.B. 401.

118.23 Inheritance taxes; limitation. Credit for State inheritance taxes is limited to that portion of the allowable maximum credit attributable to that part of the gross estate under the jurisdiction of the taxing State. Distinguished by Rev. Rul. 60–88.§81.9. (Sec. 813(b), '39 Code; Sec. 2011, '54 Code.)

Rev. Rul. 56-230, 1956-1 C.B. 660.

118.24 Inheritance taxes; Pennsylvania. The taxpayers paid their inheritance taxes to the State of Pennsylvania. Under a decision of the Pennsylvania Supreme Court, it was possible for the taxpayers to obtain a refund of a part of the taxes paid. The taxpayers had received no refund nor did they have a claim for refund pending. The U.S. Board of Tax Appeals held that the inheritance taxes were "actually paid." Consequently, the taxpayers were entitled to a credit in the full amount of inheritance taxes paid to Pennsylvania. (Sec. 301(b), Revenue Act of 1926; Secs. 2011, 2012, '54 Code.)

Pamphila H. Phillips, 36 B.T.A. 1102, Nonacq. withdrawn and Acq. substituted, 1958–2 C.B. 7.

118.25 Limitation period; claims; state death tax credit. A claim for refund of federal estate tax based on an additional state death tax credit claimed under section 2011 may be made during the 2-year period for filing a claim for refund under section 6511(a) even though the 4-year period of limitation under section 2011(c) has expired. Rev. Rul. 56–568 superseded. §§20.2011–1, 301.6511(a)–1. (Secs. 2011, 6511; '54 Code.)

Rev. Rul. 81–263, 1981–1 C.B. 169.

118.26 Limitation period; correspondence indicating intent to claim credit. Correspondence received within four years after filing the Federal estate tax return, clearly indicating an intent to claim credit for state inheritance taxes, may be considered as a claim filed within the statutory period. In such case the supporting evidence need not be submitted within the statutory period so long as the taxes were actually paid within four years.§81.9. (Sec. 813(b), '39 Code; Sec. 2011, '54 Code.)

Rev. Rul. 55–380, 1955–1 C.B. 462.

118.27 Prior transfers; adjustment of deductions. In computing the limitation on the credit for tax on prior transfers, no proportionate adjustment is to be made with respect to deductions allowable to the transferee's estate for expenses and losses. In computing the tax on the reduced gross estate, in cases where a marital deduction is allowable, the maximum deduction applicable for purposes of computing this limitation is 50 percent of the reduced adjusted gross estate.§20.2013–3. (Sec. 2013, '54 Code.)

Rev. Rul. 60–161, 1960–1 C.B. 367.

118.28 Prior transfers; administration expenses. Where the transferor bequeaths an interest in his residuary estate, the value of the property transferred for purposes of section 2013 is computed on the net value of the residuary estate after deducting all of the administration expenses whether taken as deductions under section 2053 for estate tax purposes or under sections 162 or 212 of the Code for income tax purposes. §20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 66–233, 1966–2 C.B. 428.

118.29 Prior transfers; annual right to withdraw trust corpus. A decedent's noncumulative annual right, created by the will of a decedent who died within the previous ten years, to withdraw the greater of $5,000 or five percent of the value of trust corpus is a general power of appointment that qualifies as property for purposes of the credit for tax on prior transfers, and the value for computing the credit is its value on the date of the transferor's death. §§20.2013–1, 20.2041–1. (Secs. 2013, 2041; '54 Code.)

Rev. Rul. 79-211, 1979-2 C.B. 319.

118.30 Prior transfers; computation. The credit allowable for tax on prior transfers is not limited to the actual tax paid by the estate of the immediately preceeding transferor but may, in cases where a credit or deduction was allowed in the prior estate under section 2012 of the Code (or corresponding sections of prior laws), section 2013, or section 812(c) of the 1939 Code, be smaller, the same, or greater than the actual Federal estate tax paid.§20.2013–1. (Sec. 2013, '54 Code.)

Rev. Rul. 59–73, 1959–1 C.B. 234.

118.31 Prior transfers; computation. For purposes of computing the limitation on the credit for tax on prior transfers prescribed in section 2013(c)(1) for an estate having both community and separate property, the adjusted gross estate for the reduced estate is determined by subtracting from the reduced gross estate: (1) an amount that bears the same ratio to the entire value of the reduced gross estate that all of the community property bears to the entire gross estate, and (2) an amount that bears the same ratio to the aggregate of the deductions allowed under sections 2053 and 2054 that the value of all of the separate property bears to the entire gross estate. §20.2013–3. (Sec. 2013, '54 Code.)

Rev. Rul. 76–311, 1976–2 C.B. 261.

118.32 Prior transfers; computation. The estate tax exemption allowed to the estate of a transferor who died before 1977 is added back to the taxable estate for purposes of computing the "first limitation" of the credit for tax on prior transfers allowable with respect to the estate of a transferee who died after 1976. (Sec. 2013, '54 Code.)

Rev. Rul. 79–317, 1979–2 C.B. 318.

118.33 Prior transfers; general power of appointment. There is a transfer to a decedent-transferee of a beneficial interest in property for purposes of the credit for tax on prior transfers, if the property interest meets the requirements of a general power of appointment within the meaning of section 2041 of the Code at the time of the transferor's death. §§20.2013–1, 20.2041–1. (Secs. 2013, 2041; '54 Code.)

Rev. Rul. 66–38, 1966–1 C.B. 212.

118.34 Prior transfers; installment payments. If the estate tax of a transferor decedent is being paid in section 6166 installments, only the amount of installments actually paid is to be used in computing the section 2013 credit for the estate of the transferee decedent. §§20.2013–2, 20.6166–1, 301.6511(a)–1. (Secs. 2013, 6166, 6511; '54 Code.)

Rev. Rul. 83–15, 1983–1 C.B. 224.

118.35 Prior transfers; insured's incidents of ownership. The credit for tax on prior transfers will not apply to a life insurance policy on the decedent's life that was included in the predeceased spouse's residuary estate and bequeathed to the decedent spouse as trustee of the residuary trust, for the benefit of their children, with powers sufficiently broad so as to be termed "incidents of ownership" within the meaning of section 2042. §20.2013–5. (Sec. 2013, '54 Code.)

Rev. Rul. 77–156, 1977–1 C.B. 269.

118.36 Prior transfers; life estate. The value of a life estate, without more, qualifies for the credit for tax on prior transfers notwithstanding the fact that it is not included in the gross estate of the transferee-decedent.§20.2013–1. (Sec. 2013, '54 Code.)

Rev. Rul. 59–9, 1959–1 C.B. 232

118.37 Prior transfers; marital deduction. In determining the credit for tax on prior transfers under the "second limitation" of section 2013(c)(1), for purposes of computing the tax on the reduced adjusted gross estate of a decedent who died after 1976, the applicable marital deduction is the value of the property actually passing to the surviving spouse, but not to exceed the greater of $250,000 or one-half of the reduced adjusted gross estate. Rev. Rul. 60–161 amplified. §§20.2013–3, 20.2056(c)–1. (Secs. 2013, 2056; '54 Code.)

Rev. Rul. 80–210, 1980–2 C.B. 251.

118.38 Prior transfers; marital deduction and charitable deduction. In computing the credit for tax on prior transfers under the "second limitation" of section 2013(c)(1) of the Code, the marital deduction and charitable deduction to be used in computing the tax described in subparagraph (A) of such section are the same as the respective amounts allowed as deductions in the final determination of the decedent's taxable estate.§20.2013–1. (Sec. 2013, '54 Code.)

Rev. Rul. 61–208, 1961–2 C.B. 148.

118.39 Prior transfers; power to divert trust income impliedly limited. A credit for tax on prior transfers is allowable with respect to a decedent-transferee's residuary interest in trust property where the trustee's power to divert trust income to the deceased transferor's spouse is impliedly limited by a definite ascertainable standard.§20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 70–292, 1970–1 C.B. 187.

118.40 Prior transfers; property not susceptible of valuation at transferor's death. Where a decedent-transferee received a property interest which was not susceptible of valuation by recognized valuation principles on the date of death of the transferor, a credit for estate tax paid on the transfer of such an interest from the estate of the transferor is not allowed against the Federal estate tax imposed upon the estate of the decedent-transferee.§20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 67–53, 1967–1 C.B. 265.

118.41 Prior transfers; remainder interest. Credit for tax paid is not allowable to a decedent's estate with respect to a remainder interest in property acquired from a devisor who died more than ten years before the decedent but who had acquired his interest from a transferor who died only three years before the decedent. §20.2013–5. (Sec. 2013, '54 Code.)

Rev. Rul. 71–480, 1971–2 C.B. 327.

118.42 Prior transfers; remainder interest; valuation. The value of a remainder interest received in 1970 will be based upon the 3½-percent actuarial tables contained in section 20.2031–7 of the regulations for purposes of the credit for tax on prior transfers in the estate of the beneficiary who died in 1974. §20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 75–293, 1975–2 C.B. 357.

118.43 Prior transfers; residuary trust; valuation. An illustration is given of the correct method of computing the value, for purposes of the credit provided by section 2013, of a decedent's interest in a residuary trust that was subject to the discretionary power of the trustee to invade corpus for the benefit of others. §20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 75–550, 1975–2 C.B. 357.

118.44 Prior transfers; usufruct. A usufruct, created under Louisiana law, the value of which was included in the gross estate of the transferor, is a "beneficial interest in property" which was the subject of a "transfer" for the purpose of the credit for tax on prior transfers authorized by section 2013 of the Code; the credit may be applied notwithstanding the fact that the usufruct is not included in the transferee-decedent's estate. §20.2013–5. (Sec. 2013, '54 Code.)

Rev. Rul. 66–271, 1966–2 C.B. 430.

118.45 Prior transfers; valuation; alternate. The executor of an estate elected alternate valuation. For purposes of calculating the credit for tax on prior transfers, the value of a life estate is based on the appropriate factor for the transferee's age on the date of the transferor's death, and the value of the trust's corpus is determined on the alternate valuation date. §§20.2013–4, 20.2031–10, 20.2032–1. (Secs. 2013, 2031, 2032; '54 Code.)

Rev. Rul. 81–118, 1981–1 C.B. 453.

118.46 Prior transfers; valuation; imminent death of transferee. The principle of valuation enunciated in *Nellie H. Jennings,* and similar cases, where the death of a life tenant from known causes is predictable and imminent on the valuation date, may be applied in determining the value at date of transferor's death of a transferee's life or remainder interest for purposes of section 2013. However, it may not be applied in computing the value of a decedent's reversionary interest for purposes of sections 2037(b) and 2042(2). Clarified by Rev. Rul. 80–80. §§20.2013–4, 20.2037–1, 20.2042–1. (Secs. 2013, 2037, 2042; '54 Code.)

Rev. Rul. 66–307, 1966–2 C.B. 429.

118.47 Prior transfers; valuation; imminent death of transferee. The actuarial tables set forth in the regulations may be disregarded in valuing annuities, life estates, terms for years, remainders, and reversions for estate and gift tax purposes only if the individual is known to have been afflicted, at the time of transfer, with an incurable physical condition that is in such an advanced stage that death is clearly imminent. Rev. Rul. 66–307 clarified. §§20.2013–4, 20.2031–10, 20.2037–1, 20.2042–1, 20.2055–2, 25.2512–9, 25.2522(c)–3. (Secs. 2013, 2031, 2037, 2042, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 80–80, 1980–1 C.B. 194.

118.48 Prior transfers; valuation; property exchanged for trust interest. Decedent's election under the will of her spouse to transfer her remainder interest in community property to a trust created by the will and to take a life interest in the trust was not an obligation imposed by the transferor of the estate that would serve to reduce the value of the property received, and the decedent's estate was entitled to a credit for estate taxes paid by the spouses's estate on property transferred to the decedent. (Secs. 2013, 2031; '54 Code.)

Isabelle M. Sparling, 60 T.C. 330, Nonacq., 1978–1 C.B. 3.

118.49 Prior transfers; valuation; remarriage contingency. A remarriage contingency will not result in disallowance of the credit for tax on prior transfers. It is a valuation factor to be taken into account in determining the value of the income interest transferred. §20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 85–111, 1985–30 I.R.B. 20.

118.50 Prior transfers; valuation; stock subject to buy-sell agreement. For purposes of computing the credit for tax on prior transfers, stock of a closely held corporation that could have been the subject of a lifetime transfer at any price, but that was subject to a buy-sell agreement under which the legatee was required to and did sell the stock to the remaining shareholders at a specified price that was less than its then fair market value, is valued in the estate of the legatee at the price at which the stock was sold to the other shareholders. Each of the remaining shareholders will be entitled to a credit for tax on prior transfers for a proportionate part of the difference between the specified sale price and the fair market value of the stock.§20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 78–58, 1978–1 C.B. 279.

118.51 Prior transfers; waiver. Credit for tax on prior transfers may not be waived in whole or in part and each transfer meeting the requirements of section 2013 of the Code must be taken into account in computing the credit.§20.2013–1. (Sec. 2013, '54 Code.)

Rev. Rul. 73–47, 1973–1 C.B. 397.

118.52 Prior transfers; widow's statutory allowance. The amount received from the estate of a prior decedent under a state statute as a widow's allowance represents property received by the decedent from the transferor's estate for the purpose of the credit for tax on prior transfers provided it was paid out of the principal of the transferor's estate and was not allowed as a deduction from his gross estate as an amount expended for support of dependents, nor allowed as a marital deduction. (Sec. 2013, '54 Code.)

Rev. Rul. 58–167, 1958–1 C.B. 340.

118.53 Property previously taxed; claims against estate. Where a decedent, who has been executor, principal creditor and sole legatee of his wife's estate, had waived his claim against her estate, he took her property by inheritance rather than by purchase, and therefore, that property qualifies as property previously taxed in his estate. However, if a beneficiary under a will does not in fact waive his claim as creditor, a deduction for property previously taxed will be denied. Further, if the estate of a prior decedent was allowed a deduction as claims against the estate for the same item as is now sought to be deducted as property previously taxed, such deduction will be denied.§§20.2013–5, 20.2053–4. (Secs. 2013, 2053; '54 code.)

Rev. Rul. 60–247, 1960–2 C.B. 272.

118.54 Property transferred in payment of state inheritance tax liability. The payment of state inheritance taxes in property other than cash constitutes "taxes actually paid" to the state for purposes of the federal estate tax credit. The amount "actually paid" is the lesser of the state inheritance tax liability discharged by the transfer of the property or the fair market value of the property on the date of the transfer. §20.2011–1. (Secs. 1001, 1014, 2011; '54 Code.)

Rev. Rul. 86–117, 1986–39 I.R.B. 19.

118.55 State death tax; installment method. When an estate elects to pay the federal estate tax in installments and also elects to pay state death taxes in annual installments over a period longer than four years from the date of the filing of the federal estate tax return, the exception described in section 2011(c)(2) is applicable. State death taxes paid by the estate more than four years after the filing of the federal estate tax return are not eligible for the credit described in section 2011 when none of the exceptions described in sections 2011(c)(1)through (3) are applicable. §20.2011–1. (Sec. 2011, '54 Code.)

Rev. Rul. 86–38, 1986–11 I.R.B. 22.

118.56 State death tax credit; farms; special use value; liens. The section 2011 credit, used under section 2032A(c)(2)(C) in computing what would have been the estate tax liability but for the section 2032A election, is derived with respect to three different types of state death tax statutes. The computation is made for the purpose of determining the amount of the lien imposed by section 6324B. §20.2011–1. (Secs. 2011, 2032A, 6324B; '54 Code.)

Rev. Rul. 82–35, 1982–1 C.B. 128.

118.57 State death tax credit; installment method. A state death tax credit is not equivalent to a payment of estate tax for purposes of avoiding the acceleration of federal estate tax installment payments. §§20.2011–1, 20.6166–3. (Secs. 2011, 6166; '54 Code.)

Rev. Rul. 85–43, 1985–1 C.B. 356.

118.58 State gift tax paid. A state gift tax paid by a donor on a transfer later included in the donor's state inheritance tax base, and regarded as an advance payment of state inheritance tax, does not create an asset of the estate for purposes of section 2033 and is not includible in the decedent's gross estate at death. A credit under section 2011 is not allowable for any amount of inheritance tax considered paid by a credit of state gift tax paid before death. A state gift tax unpaid at death, which gives rise to a credit against the state inheritance tax when paid, is not allowable as a credit under section 2011, but is deductible as a claim against the estate under section 2053. Rev. Ruls. 71–355 and 75–63 revoked. §§20.2011–1, 20.2033–1, 20.2053–6. (Secs. 2011, 2033, 2053; '54 Code.)

Rev. Rul. 81–302, 1981–2 C.B. 170; Grace E. Lang, 64 T.C. 404, Acq., 1981–2 C.B. 2; George E. P. Gamble, 69 T.C. 942, Acq., 1981–2 C.B. 1.

118.59 Unified credit; tax conventions. The term "specific exemption" referred to in the estate tax conventions between the United States and Australia, Finland, Greece, Italy, Japan, Norway, and Switzerland may not be construed to include the section 2010 unified credit added to the Code by the Tax Reform Act of 1976. Accordingly, the estate of a citizen and resident of Switzerland is entitled to only the $3,600 unified credit. (Sec. 2102, '54 Code.)

Rev. Rul. 81–303, 1981–2 C.B. 255.

Criminal prosecutions

(See: ADMINISTRATIVE)

Curtesy

(See: Dower and curtesy)

Damages

120.1 Airplane accident. Amounts received from an insurance company by an executor, in settlement of a claim against the carrier for damages arising from the decedent's death in an airplane accident do not constitute life insurance proceeds. However, had the contract between the insurance carrier and the owner of the airplane provided payment of an agreed amount to the estate of any passenger who died as a result of an accident while on the plane, the acceptance of such amount would have constituted insurance receivable by the executor and includible in gross estate. (Sec. 2042, '54 Code.)

Rev. Rul. 57–54, 1957–1 C.B. 298.

120.2 Survivor's loss benefits; no-fault automobile insurance. Survivor's loss benefits payable under a no-fault automobile insurance policy are not property in which the decedent had an interest at death and are not includible in the gross estate. §§20.2033–1, 20.2042–1. (Secs. 203, 2042; '54 Code.)

Rev. Rul. 82–5, 1982–1 C.B. 131.

120.3 Workmen's compensation payments. Amounts payable under state workmen's compensation acts to the widow or dependents of an employee who dies as the result of an occupational disease are not includible in the estate of the deceased employee. (Sec. 2033, '54 Code.)

Rev. Rul. 56–637, 1956–2 C.B. 600.

120.4 Wrongful death. A husband and wife, residents of Iowa, were simultaneously killed in an airplane crash in Japan. Their wills were probated and the executors of their estate filed wrongful death actions, which were settled out-of-court, against the airline and the airplane manufacturer in Illinois where they did business. *Held*, the settlement proceeds are not includible in the decendents' gross estate since, had the action not been settled, the Illinois court under the choice-of-law rule, would have settled the cases under Japanese law, which vests the rights to the death settlement proceeds in decendents' relatives and dependents and not in the decedents' estate. *Further held*, the decedents at the time of their deaths could have no general power of appointment as defined in section 2041(a) of the Code as no interest existed prior to their death; therefore, that section could not be applied to require inclusion of the proceeds in gross estate. (Secs. 2033, 2141; '54 Code.)

Maxwell Trust, 58 T.C. 444, Acq., 1973–2 C.B. 2.

120.5 Wrongful death; Arizona. Damages recovered under the Arizona wrongful death statute in an action brought on behalf of the decedent's estate are not includible in the decedent's gross estate even though the recovery constitutes an asset subject to the decedent's debts and liabilities. §§20.2033–1, 20.2041–1. (Secs. 2033, 2041; '54 Code.)

Rev. Rul. 75–126, 1975–1 C.B. 296.

120.6 Wrongful death; Death on the High Seas Act. Damages recoverable for wrongful death in an action brought under the Federal Death on the High Seas Act are not includible in the gross estate of the decedent; but damages recoverable for pain and suffering of the decedent are includible.§20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 69–8, 1969–1 C.B. 219.

120.7 Wrongful death; Iowa and Connecticut. The Service will no longer take the position under the law of Connecticut, Iowa, or of any State having a "survival" type wrongful death statute that the value of wrongful death proceeds, which include nothing for the pain, suffering, or other expenses of decedent during his lifetime, is includible in decedent's gross estate. §§20.2033–1, 20.2041–1. (Secs. 2033, 2041; '54 Code.)

Rev. Rul. 75–127, 1975–1 C.B. 297.

120.8 Wrongful death; New Jersey. Damages received in settlement of claims under the New Jersey wrongful death statute are not includible in the decedent's gross estate nor taxable as income to the decedent's estate or to the dependents who received the proceeds.§81.13. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 54–19, 1954–1 C.B. 179.

Debts of decedent

(See: Claims against estate)

Deductions

(See also specific subject headings)

122.1 Charitable transfer; stock; dividends paid to noncharitable beneficiary. An estate tax charitable deduction is not allowable for shares of stock bequeathed to charity where the will provides that, during administration of the estate, dividends from the stock are payable to a noncharitable beneficiary. §20.2055–2 (Sec. 2055, '54 Code.)

Rev. Rul. 83–45, 1983–1 C.B. 233.

122.2 Claims against estate; payment in satisfaction of judgment resulting from collusive suit. No deduction is allowable under section 2053(a)(3) for a claim that is based upon a judgment resulting from a collusive law suit which was instituted by the decedent's child

against the decedent before the decedent's death. §20.2053–1. (Sec. 2053, '54 Code.)
Rev. Rul. 83–54, 1983–1 C.B. 229.

122.3 Funeral expenses; care of family burial lot. A bequest to a cemetery association for the perpetual care of a family burial lot in which the decedent is interred, including all graves in that lot, may be deducted as a funeral expense of the decedent's estate, provided such a bequest is allowable under the laws of the particular jurisdiction. However, a bequest for the perpetual care of burial lots in which the decedant is not interred, even though located within the confines of the same cemetery, is not deductible. (Sec. 2053, '54 Code.)
Rev. Rul. 57–530, 1957–2 C.B. 621.

122.4 Losses; tax attributable to included insurance proceeds. No deduction is allowable under section 2054 to an estate by reason of the executor's inability to recover from the insurance beneficiary an amount equal to his pro rata share of the estate tax liability. However, a legatee whose share of the estate bears the burden of such tax is entitled to a bad debt deduction under section 166(d)(1) of the Code.§20.2054–1. (Secs. 166, 2054; '54 Code.)
Rev. Rul. 69–411, 1969–2 C.B. 177.

122.5 Medical expenses; deducted on final income tax return. The portion of a decedent's medical expenses, which are paid by a representative within one year following the decedent's death and claimed as a deduction on the decedent's final income tax return, that does not exceed three percent of adjusted gross income and is consequently not deductibie under section 213 may not be deducted as a claim against the estate under section 2053.§1.213–1. (Secs. 213, 2053; '54 Code.)
Rev. Rul. 77–357, 1977–2 C.B. 328.

122.6 "Points" assumed by seller/decedent; death before sale completed. An individual entered into an arm's length agreement to sell a personal residence and to pay mortgage "points" for the buyer that were to be deducted from the sale proceeds, but died before consummating the sale. The amount includible in the individual's gross estate is the sales price of the property less the "points" assumed by the seller, and the "points" are not deductible. §§20.2031–1, 20.2053–4. (Secs. 2031, 2053; '54 Code.)
Rev. Rul. 80–319, 1980–2 C.B. 252.

Deficiencies

(See: ADMINISTRATIVE)

Delegation of authority

(See; ADMINISTRATIVE: Administration)

Diplomatic immunity

124.1 Bank deposits and bonds. A duly accredited diplomatic officer, who merely represents his government in this country, is not a person engaged in business in the U.S. Consequently, any moneys deposited with any person carrying on the banking business by or for the diplomatic officer of a foreign country, who at the time of his death is neither domiciled in nor a national of the U.S., are exempt from Federal estate tax. (Secs. 2105, 2106; '54 Code.)
Rev. Rul. 56–52, 1956–1 C.B. 448.

124.2 United Nations members. An agreement between the United States of America and the United Nations respecting the headquarters of the United Nations provides that certain representatives of member nations and their staffs and certain representatives of specialized agencies and their staffs shall be entitled to the same privileges and immunities accorded to diplomatic envoys accredited to the United States, that is, that personal property used by him in the conduct of his official mission and reasonably required therefor is not subject to estate tax.§81.13. (Sec. 861, '39 Code; Secs. 2013, 2106, '54 Code.)
Rev. Rul. 187, 1953–2 C.B. 291.

Disclaimer

(See: Charitable, etc., transfers; Interests in property; Marital deduction)

Disclosure of information

(See: ADMINISTRATIVE: Publicity of information)

Dividends

126.1 Elective stock dividend; jointly owned stock. An individual acquired common stock of a corporation and placed it in a joint tenancy with rights of survivorship. Before the individual's death, the corporation distributed a one-share-for-four stock dividend and another dividend that was paid in stock in lieu of cash at the joint tenants' election. The value of all the stock except one-half the elective stock dividend is includible in the decedent's gross estate. §20.2040–1. (Sec. 2040, '54 Code.)
Rev. Rul. 80–142, 1980–1 C.B. 197.

126.2 Payable after death. Dividends declared before death, but made payable after death are to be added to the fair market value of the stock when the stock is listed on an exchange and is quoted ex-dividend on the date of death.§81.13. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)
Rev. Rul. 54–399, 1954–2 C.B. 29.

126.3 Payable after death; alternate valuation. Dividends declared prior to a decedent's death payable after date of death may not be added to the ex-dividend selling prices of stock for gross estate purposes under the alternate valuation provisions, but must be added to the ex-dividend selling prices at date of death for valuing the gross estate at date of death only. Where the alternate valuation method is used, stock valued at its ex-dividend selling price at the alternate valuation date must be increased by the amount of any dividends declared during the alternate valuation period.§20.2032–1. (Sec. 2032, '54 Code.)
Rev. Rul. 60–124, 1960–1 C.B. 368.

126.4 Stock selling ex-dividend on Monday; valuation. In valuing listed stocks where the decedent died on a weekend and such stocks were selling ex-dividend on the trading day immediately subsequent thereto, the amount of the dividend must be added to the mean of the ex-dividend quotations.§20.2031–2. (Sec. 2031, '54 Code.)
Rev. Rul. 68–610, 1968–2 C.B. 405.

Domicile

128.1 Alien employed in U.S. by international organization; G4 visa. An employee of an international organization who entered the U.S. on a G–4 visa and intended to remain in the U.S. indefinitely, which intent persisted until death, was a resident of the U.S. Rev. Rul. 74–364 revoked. §20.2001–1. (Sec. 2001, '54 Code.)
Rev. Rul. 80–363, 1980–2 C.B. 249.

128.2 Date and time of death; time zone of domicile; nonresident citizens. The date and time of death of a nonresident citizen of the U.S. who died in the foreign country of his domicile is the established day and time in the place of his domicile at the instant of death. Rev. Rul. 66–85 modified.§20.2031–1. (Sec. 2031, '54 Code.)
Rev. Rul. 74–424, 1974–2 C.B. 294.

128.3 Date of death; time zone of domicile; resident citizens. Where a U.S. citizen dies in one time zone while domiciled in the U.S. in another zone, the time and date of decedent's death for Federal estate tax purposes is the time and date prevailing at the instant of death in his domicile and the place where the estate tax return is to be filed. Modified by Rev. Rul. 74–424.§20.2031–1. (Sec. 2031, '54 Code.)
Rev. Rul. 66–85, 1966–1 C.B. 213.

128.4 Illegal alien. An illegal alien who lived in the U.S. for 19 years with the alien's family, purchased a residence, and established strong community ties was domiciled in the U.S. at the date of death, and the estate is subject to tax. §§20.0–1, 20.2101–1. (Secs. 2001, 2101; '54 Code.)
Rev. Rul. 80–209, 1980–2 C.B. 248.

128.5 Jurisdiction claimed by two states. Full credit will be allowed against the Federal estate tax, subject to the overall limitations of section 2011 of the Code, for the payments of death taxes imposed upon an estate by two states, where each of the taxing agencies claims jurisdiction upon the basis of domicile. Mim. 3971 amplified. Rev. Rul. 56–230 distinguished.§20.2011–1. (Sec. 2011, '54 Code.)
Rev. Rul. 60–88, 1960–1 C.B. 365.

128.6 Visiting alien intending to become citizen. Decedent, a nonresident alien, who never entered the U.S. except as a temporary visitor cannot be considered as domiciled in the U.S., even though he may have formed the intent of establishing a domicile and a substantial portion of his property is in the U.S. and subject to estate tax. (Sec. 2101, '54 Code.)
Rev. Rul. 58–70, 1958–1 C.B. 341.

Dower and curtesy

130.1 Marital deduction. By will, the decedent left her entire estate to her son. Her surviving husband elected to take his statutory share under New York law, against the will. He then divided his share into three equal parts and gave it to the son's three children. *Held,* the decedent's estate was entitled to a marital deduction for the share of the estate which passed to the surviving husband under his election. (Sec. 2056, '54 Code.)
Isaac Harter, Jr., 39 T.C. 511, Acq., 1963–2 C.B. 4.

130.2 Marital deduction; commuted value. The commuted value of a widow's dower, if requested and paid in accordance with the applicable state law, is a nonterminable interest that qualifies for the marital deduction. Rev. Rul. 279 revoked. Modified by Rev. Rul. 83–107. §20.2056(b)–1. (Sec. 2056, '54 Code.)
Rev. Rul. 72–7, 1972–1 C.B. 308.

130.3 Marital deduction; commuted value. An estate can deduct, under section 2056, the amount paid to the decedent's spouse under a negotiated settlement of the spouse's dower claim, if the settlement is a bona fide compromise resulting from the spouse's assertion of an enforceable right for commutation, and the amount is not more than the commuted value of the dower interest the spouse would have received in a court proceeding. Rev. Rul. 72–7 modified; Rev. Rul. 66–139 clarified. §§20.2056(b)–1. (Sec. 2056, '54 Code.)
Rev. Rul. 83–107, 1983–2 C.B. 159.

130.4 Marital deduction; Florida. The dower interest obtained by a widow on her proper election under Florida law to take against her husband's will qualifies for the marital deduction.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 72–8, 1972–1 C.B. 309.

130.5 Settlement payment; common law spouse. An amount paid to a decedent's alleged common law surviving spouse in settlement of a claim to dower in the decedent's estate does not qualify for the marital deduction in the absence of evidence that the alleged spouse was the decedent's legal spouse. §20.2056(a)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 76–155, 1976–1 C.B. 286.

130.6 Settlement payment; compromise for dower interest. A settlement payment made by the executor of a decedent's estate to decedent's surviving spouse in compromise of a claim made by her in good faith for an absolute dower interest under state law, following arm's-length negotiations, qualifies for the marital deduction. Clarified by Rev. Rul. 83–107. §20.2056(e)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 66–139, 1966–1 C.B. 225.

130.7 Settlement payment; conditioned upon favorable Service determination. A cash payment in settlement of a surviving spouse's claim to a dower interest, paid under an agreement containing the stipulation that the payment was conditioned on the Service's determination that the payment would qualify for the marital deduction, is not a terminable interest and qualifies for the marital deduction. Rev. Rul. 65–144 distinguished. §§20.2056(b)–1, 20.2056(e)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 76–199, 1976–1 C.B. 288.

Elections
(See: ADMINISTRATIVE)

Enrollment
(See: ADMINISTRATIVE: Attorneys and agents)

Evasion of tax
(See: ADMINISTRATIVE: Fraud)

Evidence
(See: ADMINISTRATIVE: Criminal prosecutions; Suits)

Examination of records and returns
(See: ADMINISTRATIVE: Books and records; Returns)

Executors
(See: Administrators and executors)

Expenses
(See: Administration expenses; Funeral expenses)

Extension of Time
(See: ADMINISTRATIVE)

Fees
(See: Administration expenses)

Fiduciaries
(See: Administrators and executors)

Foreign taxes
(See: Credits against tax)

Forms
(See: ADMINISTRATIVE)

Fraud
(See: ADMINISTRATIVE: Criminal prosecutions; Fraud; Penalties; Suits

Funeral expenses

132.1 Care of family burial lot. A bequest to a cemetery association for the perpetual care of a family burial lot in which the decedent is interred, including all graves in that lot, may be deducted as a funeral expense of the decedent's estate, provided such a bequest is allowable under the laws of the particular jurisdiction. However, a bequest for the perpetual care of burial lots in which the decedent is not interred, even though located within the confines of the same cemetery, is not deductible. (Sec. 2053, '54 Code.)

Rev. Rul. 57–530, 1957–2 C.B. 621.

132.2 Community property state; California. Prior to June 17, 1970, only one-half of the funeral expenses, as allocated to a decedent's half interest in community property under California law, is deductible from the decedent's gross estate. Modified to provide that on and after June 17, 1970, the full amount paid for such expenses of a California decedent is deductible from his gross estate.§20.2053–2. (Sec. 2053, '54 Code.)

Rev. Rul. 70–156, 1970–1 C.B. 190; Rev. Rul. 71–168, 1971–1 C.B. 271.

132.3 Community property state; Texas. Only one-half of the funeral expenses incurred by the estate of the first community partner to die is allowable as a deduction from an estate which is subject to Texas community property law. Modified to provide that the full amount paid on or after May 27, 1967, for funeral and related items of an estate subject to Texas community property laws is deductible to the extent provided in section 20.2053–2 of the regulations.§§20.2053–1, 20.2053–2. (Sec. 2053, '54 Code.)

Rev. Rul. 66–21, 1966–1 C.B. 219; Rev. Rul. 69–193, 1969–1 C.B. 222.

132.4 Liability for payment. Funeral expenses and expenses of the last illness of a wife are not deductible by her estate in those jurisdictions following the common law principle that a husband is primarily liable for such expenses unless a provision in her will relieves the husband of such obligation or he is insolvent. However, the expenses are deductible by the estate in those jurisdictions in which the estate of the decedent is primarily liable for such expenses. Rev. Rul. 65–300 superseded. §20.2053–1. (Sec. 2053, '54 Code.)

Rev. Rul. 76–369, 1976–2 C.B. 281.

132.5 Pennsylvania decedent. Where a Pennsylvania decedent, survived by her husband, executed a will and directed her executor to pay her funeral expenses and the expenses of her last illness from estate assets, and such items have been paid and allowed by the local court, the amount thereof is deductible from her gross estate for Federal estate tax purposes whether the husband is solvent or insolvent, provided the husband has not elected to take against the will. When such decedent's will does not provide for payment, or when the decedent dies intestate, the expenses, when paid by the estate and approved by the local court, are allowable as a deduction if the husband is insolvent, but not if he is solvent.§20.2053–2. (Sec. 2053, '54 Code.)

Rev. Rul. 65–300, 1965–2 C.B. 375.

132.6 Reimbursement under wrongful death statute. The deduction allowed to an estate for funeral expenses under section 2053 must be reduced by any reimbursement received for such expenses as the result of an action brought under a state's wrongful death statute or by the reasonable value of any right to such recovery not yet received.§20.2053–2. (Sec. 2053, '54 Code.)

Rev. Rul. 77–274, 1977–2 C.B. 326.

132.7 Stock redemption to pay death taxes. In a redemption of stock to pay death taxes, the amount of funeral and administration expenses referred to in section 303 includes those expenses paid by an estate prior to the enactment of the 1954 Code, provided such expenses are otherwise deductible under section 2053. It is not material whether such allowable expenses were deducted on income or estate tax returns filed under the 1939 Code. (Sec. 2053, '54 Code.)

Rev. Rul. 56–449, 1956–2 C.B. 180.

132.8 Trust for perpetual care of burial lot; excess funds for improvement of cemetery. Under the terms of her will, decedent established a trust of approximately $50,000, the income from which was to be applied to the perpetual care of the family burial lot located in a church-owned cemetery. The excess income was to be used for the maintenance or beautification of the cemetery. The executor took a deduction for the full sum as funeral expenses and the Commissioner disallowed the bequest in excess of $2,500 as unreasonable. *Held*, the portion of the bequest in a reasonable amount for the care of the family lot is deductible as a funeral expense; the remainder is deductible as a transfer in trust for the use of a religious corporation for religious purposes. (Sec. 812(b), '39 Code; Sec. 2053, '54 Code.)

Elizabeth L. Audenried, 26 T.C. 120, Acq., 1956–2 C.B. 4.

132.9 Veterans Administration and social security allowances. The deduction for funeral expenses actually expended by a decedent's estate must be reduced to reflect the value of any death benefits payable by the Veterans Administration to cover funeral expenses or the lump sum payments made under the Social Security Act to other than the surviving spouse, since such payments are only made in satisfaction of funeral expenses due or paid.§20.2053–2. (Sec. 2053, '54 Code.)

Rev. Rul. 66–234, 1966–2 C.B. 436.

Generation-skipping transfers
(See: Transfers)

Gift tax
(See: Credits against tax)

Gross estate
(See also specific subject headings)

134.1 Bonuses; awarded before and after death. Compensation for services rendered, in the form of bonuses awarded to a decedent before his death and payable to his estate thereafter, vest in the decedent's estate the absolute right to receive the payments and, therefore, are property includible in his gross estate. A bonus award subsequent to the death of the decedent is not property in which the decedent had an interest at the time of his death. Consequently, the value of such bonus is not includible in his gross estate.§20.2033–1. (Secs. 691, 2033; '54 Code.)

Rev. Rul. 65–217, 1965–2 C.B. 214.

134.2 Community property; interest in profit-sharing plan. Where the vested interest of a surviving spouse in a plan which meets the requirements of section 401(a) was community property, the value of the predeceased wife's community property interest therein is includible in gross estate under section 2033 and that interest is not subject to exclusion under section 2039(c) of the Code.§§20.2033–1, 20.2039–2. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 67–278, 1967–2 C.B. 323.

134.3 Community property; interest of intestate Texas decedent. A father, who died intestate and domiciled in Texas, had acquired stock which he caused to be issued in his and his wife's names as joint tenants with right of survivorship and not as tenants in common. There was no administration of the father's estate; and the mother, who later died testate and devised her estate to her son, had the stock issued in her name and received all dividends paid thereon pursuant to an oral understanding with the son. As his mother's executor, he included only one-half of the stock in the estate return, claiming that the stock was community property and that he had acquired a one-half interest in it by reason of the Texas statute of descent and distribution. *Held,* (1) the issuance of the stock as such did not, under Texas community property law, prevent one-half ownership thereof from vesting in the son (the heir at law) upon his father's death; and (2) one-half of the stock's value was at all times the son's property and not includible in his mother's gross estate. (Sec. 2033, '54 Code.)

Gertrude M. Chaddock, 54 T.C. 1667, Acq., 1970–2 C.B. xix.

134.4 Community property; nonresident citizen of Norway. The gross estate of a decedent citizen and resident of Norway includes only one-half of the value of real property located in a State that recognizes the vested interest of the spouse in Norwegian community funds used to purchase the property in the decedent's name.§§20.2033–1, 20.2103–1. (Secs. 2033, 2103; '54 Code.)

Rev. Rul. 72–443, 1972–2 C.B. 531.

134.5 Community property; transferred to revocable trust; California. Husband and wife transferred their California community property to a revocable trust, reserving to themselves a life income interest therein. Upon the death of one of the spouses, one-half of the value of the community interest in the property held in the trust is includible in determining the value of the decedent's gross estate.§§20.2033–1, 20.2036–1, 20.2038–1. (Secs. 2033, 2036, 2038; '54 Code.)

Rev. Rul. 66–283, 1966–2 C.B. 297.

134.6 Damages; wrongful death. A husband and wife, residents of Iowa, were simultaneously killed in an airplane crash in Japan. Their wills were probated and the executors of their estate filed wrongful death actions, which were settled out-of-court, against the airline and the airplane manufacturer in Illinois where they did business. *Held,* the settlement proceeds are not includible in the decedent's gross estate since, had the action not been settled, the Illinois court under the choice-of-law rule, would have settled the cases under Japanese law, which vests the rights to the death settlement proceeds in decedents' relatives and dependents and not in the decedents' estate. *Further held,* the decedents at the time of their deaths could have no general power of appointment as defined in section 2041(a) of the Code as no interest existed prior to their death; therefore, that section could not be applied to require inclusion of the proceeds in gross estate. (Secs. 2033, 2041; '54 Code.)

Maxwell Trust, 58 T.C. 444, Acq., 1973–2 C.B. 2.

134.7 Damages; wrongful death; Arizona. Damages recovered under the Arizona wrongful death statute in an action brought on behalf of the decedent's estate are not includible in the decedent's gross estate even though the recovery constitutes an asset subject to the decedent's debts and liabilities. §§20.2033–1, 20.2041–1. (Secs. 2033, 2041; '54 Code.)

Rev. Rul. 75–126, 1975–1 C.B. 296.

134.8 Damages; wrongful death; Death on the High Seas Act. Damages recoverable for wrongful death in an action brought under the Federal Death on the High Seas Act are not includible in the gross estate of the decedent; but damages recoverable for pain and suffering of the decedent are includible.§20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 69–8, 1969–1 C.B. 219.

134.9 Damages; wrongful death; Iowa and Connecticut. The Service will no longer take the position under the law of Connecticut, Iowa, or of any State having a "survival" type wrongful death statute that the value of wrongful death proceeds, which include nothing for the pain, suffering, or other expenses of decedent during his lifetime, is includible in decedent's gross estate. §§20.2033–1, 20.2041–1. (Secs. 2033, 2041; '54 Code.)

Rev. Rul. 75–127, 1975–1 C.B. 297.

134.10 Damages; wrongful death; New Jersey. Damages received in settlement of claims under the New Jersey wrongful death statute are not includible in the decedent's gross estate nor taxable as income to the decedent's estate or to the dependents who received the proceeds.§81.13. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 54–19, 1954–1 C.B. 179.

134.11 Death benefit; no-fault insurance policy. The value of no-fault insurance death benefits payable to the executor of a deceased driver or of a deceased passenger is includible in the decendent's gross estate under section 2042. §§20.2033–1, 20.2042–1. (Secs. 2033, 2042; '54 Code.)

Rev. Rul. 83–44, 1983–1 C.B. 228.

134.12 Death benefit; Public Safety Officers' Benefit Act. A death benefit paid under section 701(a) of the Public Safety Officers' Benefit Act to the survivor of a decedent who had been employed as a public safety officer is not includible in the decedent's gross estate. §§20.2033–1, 20.2039–1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 79–397, 1979–2 C.B. 322.

134.13 Death gratuity payment. A death gratuity specifically authorized by Congress, or at any time made out of the contingent fund of the House of Representatives or of the Senate, is not includible in the gross estate of the decedent. (Sec. 2033, '54 Code.)

Rev. Rul. 55–609, 1955–2 C.B. 34.

134.14 Defeasible remainder interest in trust. A defeasible remainder interest in trust which is subject to termination at the will of another is an interest in property and the value of such interest is includible in the remainderman's gross estate if the interest was not terminated prior to his death.§§20.2031–1, 20.2033–1. (Secs. 2031, 2033; '54 Code.)

Rev. Rul. 67–370, 1967–2 C.B. 324.

134.15 Disclaimer by executor of decedent's interest in spouse's estate; New York. A legacy that was disclaimed by the executor of a New York decedent within a reasonable period of time after the death of the testatrix and under New York law is not includible in the legatee's gross estate. (Secs. 2031, 2033; '54 Code.)

Edward E. Hoenig, 66 T.C. 471, Acq., 1978–1 C.B. 1.

134.16 Discretionary "wage dividend" and "salary" death benefits. "Wage dividend" and "salary" death benefits paid by an employer, as a part of a discretionary practice not under any contract or agreement, to a decedent's wife were not includible in the gross estate under code sections 2033 or 2039. Under section 2033 decedents had only an expectancy with respect to the benefits and under section 2039 no contract or agreement existed. Acq. as to the issue under section 2033; Acq. in result as to the issue under section 2039. (Secs. 2033, 2039; '54 Code.)

William E. Barr, 40 T.C. 227, Acq. and Acq. in result, 1978–1 C.B. 1.

134.17 Group term policy; assignment of interest; California. Decedent was insured under two group life insurance policies and was issued individual certificates summarizing significant features of the master policies. One of the master policies specifically authorized an assignment of the insured's interest and a provision in the other purporting to prohibit assignment was deleted by endorsement. The certificates failed to conform to the master policies in that they purported to proscribe assignment of the insured's rights. Prior to decedent's death, he executed "absolute" assignments that were accepted by the insurance companies and the assignee. *Held,* the provisions in the master policies permitted assignments and prevailed over the individual certificates and such assignments were otherwise permissible under California law. Accordingly, the decedent effectively divested himself of all incidents of ownership in both group policies and the insurance proceeds were not includible in his gross estate. (Sec. 2042, '54 Code.)

Max J. Gorby, 53 T.C. 80, Acq., 1970–1 C.B. xvi.

134.18 Group term policy; proceeds; partnership; excludable from gross estate. Proceeds of a partnership group term life insurance policy are not includible in partner-decedent's estate under section 2042(2) where the partner assigned all right, title, and interest in the policy to a trust more than three years before death. §20.2041–1 (Sec. 2042, '54 Code.)

Rev. Rul. 83–148, 1983–2 C.B. 157.

134.19 Insurance proceeds; corporation as beneficiary; stock redemption. Proceeds of a life insurance policy on a decedent's life, payable to a wholly owned corporation of the decedent and then to the decedent's estate pursuant to a stock redemption agreement, should be reflected in the valuation of the decedent's stock, which is included in the decedent's gross estate under section 2033. The insurance proceeds are not separately included in the decedent's gross estate under section 2042. §§20.2031–2, 20.2033–1, 20.2042–1. (Secs. 2031, 2033, 2042; '54 Code.)

Rev. Rul. 82–85, 1982–1 C.B. 137.

134.20 Insurance proceeds; employees' pension plan. Only the portion of life insurance proceeds received by a beneficiary under a qualified employees' plan that is attributable to contributions by the employer falls within the exclusion provisions of section 2039(c). The portion that is attributable to the decedent's contributions is includible in his gross estate under section 2042 of the Code.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 70–211, 1970–1 C.B. 190.

134.21 Insurance proceeds; lapsed annual right. Decedent's spouse, the owner of a life insurance policy, selected a settlement option under which (1) the decedent was to receive the income from the insurance proceeds for life, (2) the decedent was to have an annual noncumulative right to withdraw 5% of the face value of the policy, and (3) the remaining insurance proceeds were to be paid to the children of decedent and spouse. Decedent annually waived the right to withdraw. The property subject to the decedent's lapsed annual right to withdraw insurance proceeds is not includible in decedent's gross estate. The value of the decedent's right to withdraw insurance proceeds at death, however, is includible. §§20.2036–1, 20.2041–3. (Secs. 2036, 2041; '54 Code.)

Rev. Rul. 79–373, 1979–2 C.B. 331.

134.22 Insurance proceeds; simultaneous death of spouses. An individual who owned an insurance policy on his spouse's life naming the trustee of a living trust as beneficiary, and who pursuant to local law was presumed to have survived his spouse when they died simultaneously, is deemed to have made a gift of the insurance proceeds to the trustee subject to the provisions of section 2501 and such proceeds are also includible in his gross estate under section 2036.§§20.2036–1, 25.2511–1. (Secs. 2036, 2511; '54 Code.)

Rev. Rul. 77–48, 1977–1 C.B. 292.

134.23 Insurance proceeds; simultaneous deaths. The value of insurance to be included in the estates of two individuals, each of whom owned an insurance policy on the life of the other and both of whom died in circumstances in which each was considered to have been the survivor under the state's Uniform Simultaneous Death Act, is the interpolated terminal reserve at the date of the insured decedent's death plus the proportionate part of the gross premium last paid before the date of the insured's death that covers the period extending beyond that date.§§20.2031–8, 20.2033–1. (Secs. 2031, 2033; '54 Code.)

Rev. Rul. 77–181, 1977–1 C.B. 272.

134.24 Insurance proceeds; simultaneous deaths of husband and wife. Taxpayer and his wife, both residents of Oregon, were killed simultaneously in an airplane crash on February 25, 1964. Both died testate. At the time of death, taxpayer's wife owned a $100,000 insurance policy on his life. *Held*, no part of the insurance proceeds were includible in the husband's estate as he inherited none of the incidents of ownership in the policy from his wife; however, the full amount of the proceeds is includible in the wife's estate. (Secs. 2033, 2042; '54 Code.)

Roger M. Chown, 51 T.C. 140, Acq., 1969–1 C.B. 21.

134.25 Insurance proceeds; "split dollar" arrangements. Factual situations illustrate whether a decedent, or the corporation controlled by the decedent, possessed sufficient incidents of ownership in an insurance policy on the decedent's life, for which premium costs were shared under a split-dollar arrangement, to require inclusion in the gross estate of proceeds paid to the decedent's personal beneficiary. Modified by Rev. Rul. 82–145. §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 76–274, 1976–2 C.B. 278.

134.26 Insurance proceeds; "split-dollar" arrangements. A decedent's controlled corporation held at the decedent's death the right to borrow against the cash surrender value of a life insurance policy on the decedent's life. The portion of the policy proceeds payable other than to or for the benefit of the corporation is includible in the gross estate under section 2042(2). Rev. Rul. 76–274 modified. §§20.2031–2, 20.2042–1, 301.7805–1. (Secs. 2031, 2042, 7805; '54 Code.)

Rev. Rul. 82–145, 1982–2 C.B. 213.

134.27 Insurance proceeds; transferred to trust. The value of trust corpus established with proceeds of insurance on the life of decedent's predeceased husband is not includible in her estate where the insurer consents to a court authorized lump-sum distribution in lieu of monthly payments.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 70–84, 1970–1 C.B. 188.

134.28 Interests in property; simultaneous deaths; tenants by the entirety. In states that have adopted the Uniform Simultaneous Death Act, a husband and wife are each considered to have survived with respect to one-half of property held by them as tenants by the entirety if it cannot be determined that they died other than simultaneously. In the absence of evidence to indicate the wife furnished any consideration for the property, the entire value of the property is includible in the husband's gross estate and a one-half interest in the wife's gross estate. Rev. Rul. 66–60 modified. §§20.2033–1, 20.2040–1. (Secs. 2033, 2040; '54 Code.)

Rev. Rul. 76–303, 1976–2 C.B. 266.

134.29 Joint tenancy; decedent murdered by other joint tenant. The gross estate of a decedent who was murdered by a person who had furnished the entire consideration for property that the decedent and the murderer owned as joint tenants with right of survivorship includes, under section 2033, one-half of the value of the jointly owned property plus the present value of the remainder interest in the other half, if state law provides either that legal title to a murder victim's interest in a joint tenancy cannot pass to the murdering survivor or that legal title passes but equitable title does not. No part of the value of the property is includible under section 2040. §§20.2033–1, 20.2040–1. (Secs. 2033, 2040; '54 Code.)

Rev. Rul. 78–166, 1978–1 C.B. 283.

134.30 Joint tenancy; murder of joint tenant. One-half the value of real property acquired with separate funds by a decedent who held the property as joint tenant with right of survivorship with another person, whom the decedent later murdered, is includible under section 2036 in the gross estate of the decedent in a state whose law provides either that legal title to a murder victim's interest in a joint tenancy cannot pass to the murdering survivor or that legal title passes but equitable title does not.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 78–167, 1978–1 C.B. 288.

134.31 Jointly held property; consideration furnished by surviving joint tenant. A surviving joint tenant had, prior to the decedent's death, purchased income-producing property with monies received as a gift from the decedent. The property was later sold at a gain due to appreciation and reinvestment of income, and the sale proceeds placed in a joint account with decedent. The portion of the sale proceeds attributable to appreciation in value and income reinvested during the surviving joint tenant's individual ownership of the property is consideration furnished by the surviving joint tenant, and only the amount of the original gift from the decedent to the surviving tenant is includible in the decedent's gross estate. §20.2040–1. (Sec. 2040, '54 Code.)

Rev. Rul. 79–372, 1979–2 C.B. 330.

134.32 Jointly held property; converted community property. A decedent and the decedent's spouse sold jointly held property that had been acquired while they resided in a community property state and with the proceeds purchased property in a common law state where they had recently moved. One-half of the value of the property held jointly at the decedent's death is excluded from the decedent's gross estate under section 2040. §20.2040–1. (Sec. 2040, '54 Code.)

Rev. Rul. 78–418, 1978–2 C.B. 236.

134.33 Jointly held property; survivor's portion. Decedent inherited improved realty from her husband upon his death in 1942 and was the sole owner until 1948. In 1948 the decedent by gift created a joint tenancy of the property between herself and her son. Subsequently, the decedent and son provided the sums of $10,168.31 and $16,485.19, respectively, for improvements to the property and the payment of a mortgage. At the time of the decedent's death in 1960 the property had a fair market value of $95,000. *Held*, the amount to be included in the decedent's gross estate was $78,514.81 ($95,000.00 minus the $16,485.19 expenditures of the surviving joint tenant). (Sec. 2040, '54 Code.)

Edna V.T. Peters, 46 T.C. 407, Acq., 1969–2 C.B. xxv.

134.34 Jointly held stock; elective stock dividend. An individual acquired common stock of a corporation and placed it in a joint tenancy with rights of survivorship. Before the individual's death, the corporation distributed a one-share-for-four stock dividend and another dividend that was paid in stock in lieu of cash at the joint tenants' election. The value of all the stock except one-half the elective stock dividend is includible in the decedent's gross estate. §20.2040–1. (Sec. 2040, '54 Code.)

Rev. Rul. 80–142, 1980–1 C.B. 197.

134.35 Life estate with power of appointment; insurance fund. Insurance proceeds retained by an insurance company during the life of a surviving spouse who had a life estate in the fund and the power to appoint the remainder for the health, education, support and maintenance of adult children, whom the surviving spouse had no legal duty to support, are not includible in the gross estate of the surviving spouse under section 2041(a)(2). §20.2041–1. (Sec. 2041, '54 Code.)

Rev. Rul. 79–154, 1979–1 C.B. 301.

134.36 Life estate with power of appointment; Maryland. A testamentary trust providing that a decedent's spouse will receive the income of a trust for life and may appoint the corpus by will is not a general power of appointment under Maryland law, and the value of the trust corpus is neither allowed to the decedent's estate as a marital deduction under section 2056 nor includible in the spouse's gross estate under section 2041. §§20.2041–1, 20.2056(b)–5. (Secs. 2041, 2056; '54 Code.)

Rev. Rul. 76–502, 1976–2 C.B. 273.

134.37 Life insurance proceeds; group term policy purchased by employer. Decedent's life was insured under a group term life insurance policy paid for entirely by his employer who designated the beneficiaries. Decedent's only substantive right under the policy was to select an optional mode of settlement which would spread payments to one of the beneficiaries, his spouse, over a longer period of time. *Held*, decedent did not possess any of the incidents of ownership of the policy and, therefore, the insurance proceeds are not includible in the decedent's gross estate. (Sec. 2042, '54 Code.)

James H. Lumpkin, Jr., 56 T.C. 815, Nonacq., 1973–2 C.B. 2.

134.38 Life insurance proceeds; group term policy purchased by employer; retained conversion right. If a decedent transferred all the incidents of ownership in a noncontributory group term life insurance policy on the decedent's life, but retained the right to convert the policy to an individual policy should the decedent cease employment, the proceeds of the policy are not includible in the decedent's gross estate. Rev. Rul.

69–54 modified. §§20.2042–1 (Sec. 2042, '54 Code.)

Rev. Rul. 84–130, 1984–35 I.R.B. 5; James Smead, 78 T.C. 43, Acq., 1984–35 I.R.B. 4.

134.39 Life insurance proceeds; paid to trust; policy owner to receive trust income for life. An individual purchased and owned a life insurance policy on another's life and designated the trustee of a revocable trust created by the insured as beneficiary. When the insured dies and the policy proceeds become payable to the trustee, the individual, who will receive the income of the trust for life, will have made a completed gift. Further, if the individual does not relinquish the life interest in the trust, the portion of the trust corpus attributable to the individual's contribution of the policy proceeds will be includible in the individual's gross estate at death. §§20.2036–1, 25.2501–1, 25.2511–1, 25.2511–2, 25.2512–9. (Secs. 2036, 2501, 2511, 2512; '54 Code.)

Rev. Rul. 81–166, 1981–1 C.B. 477.

134.40 Life insurance proceeds; policy owned by partnership; includible in gross estate. Proceeds of a life insurance policy owned by a partnership, but payable other than to or for the benefit of the partnership, are includible in the deceased insured partner's gross estate. §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 83–147, 1983–2 C.B. 158.

134.41 Life insurance proceeds; policy purchased by employer. The decedent's corporate employer, the sole beneficiary of decedent's life insurance policy, paid by agreement one-half of the insurance proceeds to decedent's designated beneficiary. The corporate employer had paid all premiums and held all incidents of ownership. *Held,* no part of the proceeds are includible in the gross estate of the decedent. (Sec. 2042, '54 Code.)

John C. Morrow, 19 T.C. 1068, Acq. withdrawn and Nonacq. substituted, 1979–2 C.B. 2.

134.42 Life insurance proceeds; power of insured to exercise incidents of ownership. A decedent, to whom powers over an insurance policy were transferred in trust, did not have incidents of ownership in the policy if the decedent's powers could not be exercised for the decedent's benefit and the decedent did not transfer the policy or any consideration for purchasing or maintaining the policy to the trust. Rev. Rul. 76–261 revoked. §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 84–179, 1984–53 I.R.B. 7.

134.43 Lump sum social security death benefits. The lump sum payable under section 402(i) of the Social Security Act to the widow or widower of the deceased is not includible in the decedent's gross estate. E.T. 18 superseded. §20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 67–277, 1967–2 C.B. 322.

134.44 Medical expense reimbursements. Insurance reimbursements of previously deducted medical expenses that were due a decedent at the time of death and were subsequently received by the decedent's estate are includible in the gross estate. §20.2033–1. (Secs. 213, 691, 1014, 2033; '54 Code.)

Rev. Rul. 78–292, 1978–2 C.B. 233.

134.45 Partnership earnings. A partnership agreement provided that upon the death of a partner, his estate was to receive a share of the partnership profits for a definite period after his death. This contractual right is property in which the decedent had an interest at the time of his death, and the value of the right must be included in his gross estate.§20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 66–20, 1966–1 C.B. 214.

134.46 Power of appointment; incompetent beneficiary. Decedent was granted, under the terms of her husband's will, a general power of appointment over the remainder of his estate. She was later adjudged legally incompetent, and guardians of her person and estate and a new administratrix of her husband's estate were appointed. *Held,* under Texas law at the time of decedent's death, decedent was deprived of any power she previously had, and her guardians possessed a power limited by an ascertainable standard within the meaning of section 2041(b)(1). (Sec. 2041, '54 Code.)

Anna Lora Gilchrist, 69 T.C. 5, Nonacq., 1978–2 C.B. 3.

134.47 Property held in decedent's name. Certain assets, consisting of real estate, cash, stocks, bonds and other property, were held in the name of the decedent at the date of his death. *Held,* on the facts, such assets were the properties of the decedent's wife and were the proceeds of a business solely owned by her. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Albert Rand, a.k.a. Albert E. Rand, Morris Fink, Kalman Rand, Henry Rozen, and Richard Freed, 28 T.C. 1002, Acq., 1958–2 C.B. 7.

134.48 Property held in decedent's name; resulting trust. In a state whose law provides that a resulting trust can be established if it is shown that the beneficiaries are entitled to specific interests in property as a result of their contributions to the purchase of such property, only one-third of the value of real property and a promissory note received in exchange for a parcel of such real property, which had been purchased in the name of the decedent with the assets of a fund to which the decedent and two adult children had contributed equally intending that the decedent would hold the property for the benefit of all three contributors, is includible in the decedent's gross estate.§20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 78–214, 1978–1 C.B. 285.

134.49 Property settlement; civil service employee's retirement. A divorce court that has the power to decree a settlement of all marital rights ordered that if a federal employee died prior to retirement, the lump-sum refund of the employee's contribution to the U.S. Civil Service Retirement System, plus any interest accrued thereon, would be payable to the employee's former spouse. The employee died prior to retirement. The refund is includible in the employee's gross estate under section 2039 and is deductible under section 2053(a)(4). §§20.2039–2, 20.2053–7. (Secs. 2039, 2053; '54 Code.)

Rev. Rul. 80–81, 1980–1 C.B. 203.

134.50 Property settlement; Kentucky divorce decree. Decedent transferred to his wife certain real estate, reserving to himself a life estate, pursuant to a predivorce property settlement which was recited and approved by the court in the divorce decree. Under Kentucky statutes, the Court had power to decree a settlement of all property rights in an equitable manner, to vary the terms of the prior agreement or to accept them and restore to the decedent any and all property the wife had obtained from him, including the interest in the farm property. The Court ratified and approved the agreement in every detail and adjudged the respective rights of the parties in all of their property accordingly. The transfers then became effective and final. *Held,* the property transfers were founded upon the divorce decree and were supported by adequate and full consideration in money or money's worth, and the value thereof is not includible in decedent's gross estate. (Sec. 2036, '54 Code.)

Morrison T. O'Nan, 47 T.C. 648, Acq., 1967–2 C.B. 3.

134.51 Real estate contract; unpaid interest forgiven. Decedent held a partially paid real estate contract given by her grandson. While alive, she refused to accept interest payable thereon and her grandson acquiesced. The Court accepted oral testimony and found that the decedent and her grandson had agreed that no interest would be paid under the contract. *Held,* the contractual right to unpaid accrued interest did not exist at decedent's death and was not includible in her gross estate. (Sec. 2033, '54 Code.)

Harley A. Wilson, 56 T.C. 579, Acq., 1972–1 C.B. 2.

134.52 Reciprocal trust; retained interest. Decedent transferred personal and real property to his wife, but retained control over such property. Later decedent and his wife executed two interrelated trusts substantially identical and created at approximately the same time. The trust created by the wife included all the property originally transferred to her by the decedent. Both trusts were part of a single transaction designed and carried out by the decedent. The transfers in trust left each party in the same economic positions as before. Thus, decedent's estate remained undiminished to the extent of the value of his wife's trust, and the value of his estate must accordingly be increased by the value of that trust.§20.2036–1. (Sec. 2036, '54 Code.)

Grace, 395 U.S. 316, Ct. D. 1927, 1969–2 C.B. 173.

134.53 Relinquishment of life estate; contemplation of death. Where a decedent transferred property retaining only a life estate therein and later relinquished his life estate in contemplation of death, the entire value of the property is includible in gross estate.§81.16. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 56–324, 1956–2 C.B. 999.

134.54 Renunciation of bequest by executors. The executors of decedent's estate made a renunciation of decedent's testamentary interest in the estate of his deceased wife, whose will had been probated more than two years previously. Decedent had received no benefits from the bequest. *Held,* 1) the executors had the right under New York state law to renounce the bequest, and 2) the renunciation was made within a reasonable time because the delay did not prejudice the rights of any third party. (Sec. 2033, '54 Code.)

Samuel A. Dreyer, 68 T.C. 275, Acq. issue 1; Acq. in result issue 2, 1978–1 C.B. 1.

134.55 Residence; death before sale completed; buyer's "points" assumed by seller/decedent. An individual entered into an arm's length agreement to sell a personal residence and to pay mortgage "points" for the buyer that were to be deducted from the sale proceeds, but died before consummating the sale. The amount includible in the individual's gross estate is the sales price of the property less the "points" assumed by the seller, and the "points" are not deductible. §§20.2031–1, 20.2053–4. (Secs. 2031, 2053; '54 Code.)

Rev. Rul. 80–319, 1980–2 C.B. 252.

134.56 Residence transferred to decedent's child. The entire value of a residence occupied by a decedent and the decedent's child and conveyed in fee simple to the child by the decedent, who continued to enjoy unrestricted use and possession of the entire residence until death, is includible in the gross estate of the decedent under section 2036(a)(1). §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 78–409, 1978–2 C.B. 234.

134.57 Retained and contingent interests; adequacy of consideration. Under a divorce settlement agreement, decedent established an irrevocable inter vivos trust for the benefit of his former wife with the retained power to alter or amend the trust in conjunction with his former wife. The Tax Court refused to view the trust assets as a unified package, determining that separate interests were created. *Held*, the contingent interest of decedent to part of principal upon death or remarriage of the former wife lapsed at his death and was excludable from his estate. Further, the wife's right to receive trust income and to make testamentary dispositions of portions of the corpus were transferred for "adequate and full consideration" consisting of the amount of support to which she was entitled at the time the trust was established. (Secs. 2038, 2043; '54 Code.)

Donald M. Nelson, 47 T.C. 279, Nonacq., 1970-2 C.B. xxii.

134.58 State gift tax paid. A state gift tax paid by a donor on a transfer later included in the donor's state inheritance tax base, and regarded as an advance payment of state inheritance tax, does not create an asset of the estate for purposes of section 2033 and is not includible in the decedent's gross estate at death. A credit under section 2011 is not allowable for any amount of inheritance tax considered paid by a credit of state gift tax paid before death. A state gift tax unpaid at death, which gives rise to a credit against the state inheritance tax when paid, is not allowable as a credit under section 2011, but is deductible as a claim against the estate under section 2053. Rev. Ruls. 71-355 and 75-63 revoked. §§20.2011-1, 20.2033-1, 20.2053-6. (Secs. 2011, 2033, 2053; '54 Code.)

Rev. Rul. 81-302, 1981-2 C.B. 170; Grace E. Lang, 64 T.C. 404, Acq., 1981-2 C.B. 2; George E. P. Gamble, 69 T.C. 942 Acq., 1981-2 C.B. 1.

134.59 State public housing agency bonds. Bonds that are issued by a state public housing agency for a low-income housing project are included in the gross estate of the deceased owner of the bonds, even though the U.S. Housing Act of 1937 exempts them from all taxation. §20.2033-1. (Secs. 1001, 2033; '54 Code.)

Rev. Rul. 81-63, 1981-1 C.B. 455.

134.60 Stock; Alaska Native Claims Settlement Act. Stock issued by Regional and Village Corporations under the Alaska Native Claims Settlement Act to a native Alaskan who died intestate prior to the amending of the Settlement Act is not includible in the decedent's gross estate.§20.2033-1. (Sec. 2033, '54 Code.)

Rev. Rul. 78-121, 1978-1 C.B. 282.

134.61 Transfers in contemplation of death; tenants by entirety. Where property purchased by a husband from his separate funds and held in the name of himself and his wife as tenants by the entireties or as joint tenants is transferred in contemplation of death, only one-half of the value of the property is includible in each co-tenant's gross estate. Rev. Rul. 57-488 revoked.§20.2036-1. (Secs. 2035, 2036, 2040; '54 Code.)

Rev. Rul. 69-577, 1969-2 C.B. 173; A. Carl Borner, 25 T.C. 584, Acq.; Don Murillo Brockway, 18 T.C. 488, Acq.; Edward Carnell, 25 T.C. 654, Acq.; Julia Crawford Horner, 36 T.C. 337, Acq., 1969-2 C.B. xxiii, xxiv.

134.62 Transfers in contemplation of death; tenants by entirety. One-half the value of real property held by a married couple as tenants by the entirety and subsequently transferred to a third party in contemplation of the death of one of the spouses, in a state whose law provides that a tenancy by the entirety cannot be severed by either spouse acting alone and that each spouse is entitled to one-half the income from such property, is includible in the estate of the deceased spouse, even though the other spouse had purchased the property with separate funds and had elected not to report a gift at the time they took title to the property. Amplified by Rev. Rul. 81-227. §20.2035-1. (Sec. 2035, '54 Code.)

Rev. Rul. 76-348, 1976-2 C.B. 267.

134.63 Transfers to irrevocable funded life insurance trust. The decedent obtained a life insurance policy, the proceeds of which were payable to the decedent's estate to the extent of the policy's cash surrender value, less any outstanding indebtedness. The balance of the proceeds was payable to the trustee of an irrevocable funded insurance trust that was created by the decedent and owned the policy and paid that portion of the annual premium that exceeded the annual increase in the cash surrender value. The decedent transferred funds to the trustee to enable the trustee to pay the trust portion of the premium. The balance the funds initially deposited that remained in the trust at the time of the decedent's death is not includible in the gross estate under section 2036. §20.2036-1. (Sec. 2036, '54 Code.)

Rev. Rul. 81-164, 1981-1 C.B. 458.

134.64 Transfers with retained interest; timber rights. The entire value of forest land given to an individual by a decedent who reserved for ten years all timber rights, which constitute personal property under the law of the state in which the timber is located, and died during the ten-year period without having removed any timber is includible in the decedent's gross estate.§20.2036-1. (Sec. 2036, '54 Code.)

Rev. Rul. 78-26, 1978-1 C.B. 286.

134.65 Transfers with retained life estate; Swiss inheritance law. Where, pursuant to the laws of Descent and Distribution of Switzerland entitling the decedent to the usufruct for life in three-fourths of the estate of her husband, the decedent and the remaindermen established a trust consisting of that portion of her husband's estate and reserving a life estate to the decedent, no portion of the corpus of the trust is includible in the gross estate of the decedent.§§20.2033-1, 20.2036-1. (Secs. 2033, 2036; '54 Code.)

Rev. Rul. 66-86, 1966-1 C.B. 216.

134.66 Transfers with retained life estate; timber rights; timberland transferred. No part of the value of land is includible in the gross estate of a taxpayer who conveyed timber rights for five years to one person for cash and four unsecured promissory notes payable on the anniversary dates of the sale, sold the land to another person a month later, and died with 23 months remaining under the conveyance of timber rights with one note unpaid.§20.2036-1. (Sec. 2036, '54 Code.)

Rev. Rul. 77-193, 1977-1 C.B. 273.

134.67 Transfers within 3 years of death; gift tax. The gift tax paid by the decedent on a gift made within 3 years of death is includible in the gross estate under section 2035(c) even though the gift is also includible under another section. §20.2036-1. (Secs. 2035, 2036; '54 Code.)

Rev. Rul. 81-229, 1981-2 C.B. 176.

134.68 Transfers within 3 years of death; intrafamily loan. When an individual transfers cash to the individual's child within 3 years of death in exchange for a term promissory note having a fair market value less than the amount of the transferred cash, the amount includible is the difference between the amount of the loan and the fair market value of the note on the date of the gift. §§20.2033-1, 20.2043-1, 25.2512-8. (Secs. 2033, 2035, 2043, 2512; '54 Code.)

Rev. Rul. 81-286, 1981-2 C.B. 177.

134.69 Transfers within 3 years of death; tenants by entirety. When the decedent and the decedent's spouse transfer joint tenancy property, as to which there was no election under section 2515(c), within 3 years of the decedent's death, one-half of the value of the property is includible in the decedent's gross estate under section 2035 and the other one-half of the value is reflected in the estate tax computation as an adjusted taxable gift under section 2001. Rev. Rul. 76-348 amplified. §25.2515-1. (Secs. 2001, 2035, 2515; '54 Code.)

Rev. Rul. 81-227, 1981-2 C.B. 168.

134.70 Trusts; Family Estate; retained life estate. The gross estate of a grantor-decedent must include, under sections 2036 and 2038, the value of any assets held by a so-called "Family Estate" which derive from his transfers of property to the "Family Estate" in exchange for units of beneficial interest, where he continued to enjoy the transferred property until his death and, with the other trustees, held a power to amend or terminate at his death. Further, the value of the units of beneficial interest, to the extent not included otherwise, must be included in the decedent's gross estate under section 2033. §§20.2033-1, 20.2036-1, 20.2038-1. (Secs. 2033, 2036, 2038; '54 Code.)

Rev. Rul. 75-259, 1975-2 C.B. 361.

134.71 Trusts; power to terminate. A provision of a trust instrument provided that the trust could be terminated by a decedent with the consent of two of her children at any time during her lifetime. Three of the decedent's four children predeceased her. Held, the decedent's right to terminate the trust ended on the death of her third child, and the assets of the trust were not includible in her estate. (Sec. 2038, '54 Code.)

Jane deP. Webster, 65 T.C. 968, Acq., 1977-2 C.B. 2.

134.72 Trusts; revocable; created prior to 1924. Reg. 20.2038-1(d) is not applicable to exclude from the gross estate of a decedent an interest in property transferred before the enactment of the Revenue Act of 1924 to a trust, which could be amended or revoked only with the written consent of the decedent's spouse who, but for predeceasing the decedent, would have received the corpus of the trust or the income therefrom upon the death of the decedent. Section 20.2038-1(d) is equally inapplicable when a condition is added after 1924 to the right to revoke or amend requiring the written consent of at least one of the decedent's children who have a right to share in the trust income after the decedent's death.§20.2038-1. (Sec. 2038, '54 Code.)

Rev. Rul. 78-16, 1978-1 C.B. 289.

134.73 Trusts; revocable; exercise of power restricted. Where the grantor of a revocable trust at her death on May 1, 1959, had the power to revoke a trust agreement, even though the power could not have been exercised until January 1, 1960, the discounted value of the propery from the date of her death to the date the power could be exercised constitutes a part of her gross estate. G.C.M. 11034 superseded.§20.2038-1. (Sec. 2038, '54 Code.)

Rev. Rul. 68-538, 1968-2 C.B. 406.

134.74 Trusts; revocable; partial consideration. Following separation from his wife, decedent transferred property to a revocable trust for the benefit of his children. During their minority, trust income was to be paid to his wife and used for their support. *Held*, transfers to the trust were made in part for an adequate consideration, and decedent's gross estate included only the excess of the fair market value of the trust assets at time of decedent's death over the value of the children's right to support. (Sec. 811(d), '39 Code; Sec. 2038, '54 Code.)

D.C. McDonald, 19 T.C. 672, Acq., 1953–2 C.B. 3.

134.75 Uncashed social security benefit checks. The value of a decedent's interest in uncashed social security benefit checks, jointly payable to him and his surviving wife, is not includible in his gross estate. §§20.2033–1, 20.2041–1. (Secs. 2033, 2041; '54 Code.)

Rev. Rul. 75–145, 1975–1 C.B. 298.

134.76 Workmen's compensation payments. Amounts payable under state workmen's compensation acts to the widow or dependents of an employee who died as the result of an occupational disease are not includible in the estate of the deceased employee. (Sec. 2033, '54 Code.)

Rev. Rul. 56–637, 1956–2 C.B. 600.

Husband and wife

(See also: Marital deduction)

136.1 Split gifts; consenting spouse as successor custodian for minor donee. No part of the value of individually owned securities transferred by the decedent's husband to himself as custodian for his minor daughter under the Uniform Gifts to Minors Act and held by the decedent as successor custodian at the time of her death is includible in her gross estate under section 2038 of the Code notwithstanding their election under section 2513 to treat the gift as having been made one-half by each.§20.2038–1. (Sec. 2038, '54 Code.)

Rev. Rul. 74–556, 1974–2 C.B. 300.

136.2 Split gifts; deaths of spouses within 3 years of gift. If a decedent's spouse dies after the decedent, and a gift that the decedent consented to split is includible in the spouse's estate, the decedent's estate is entitled to recompute its tax. §25.2513–1. (Secs. 2001, 2035, 2512; '54 Code.)

Rev. Rul. 81–85, 1981–1 C.B. 452.

136.3 Split gifts; deaths of spouses within 3 years of gift. Under section 2001(b)(1), no portion of a split gift represents an adjusted taxable gift in the estate of a non-donor spouse, where both spouses die within three years of the transfer, the donor-spouse predeceases the non-donor spouse, and the gift is included in the gross estate of the donor-spouse under section 2035. §25.2513–1. (Secs. 2001, 2035, 2513; '54 Code.)

Rev. Rul. 82–198, 1982–2 C.B. 206.

136.4 Split gifts; gross estate of consenting spouse. The consent executed by a husband to treat a gift of property owned by his wife to a third party donee as having been made one-half by each is not deemed to have created in the husband an interest in the property transferred which, upon his death, would render any part of such property includible in his gross estate.§81.3. (Sec. 811, '39 Code; Sec. 2031, '54 Code.)

Rev. Rul. 54–246, 1954–1 C.B. 179.

Identifying numbers

(See: ADMINISTRATIVE)

Immunities

(See: Diplomatic immunity)

Indebtedness

(See: Claims against estate; Securities)

Indians

138.1 Bequest to Zuni Indian Pueblo. The Zuni Indian Pueblo of New Mexico is not a political subdivision of the U.S., the State of New Mexico, or a Territory, and a decedent's bequest to the Pueblo is not allowable as a charitable deduction.§20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 74–179, 1974–1 C.B. 279.

138.2 Osage; homestead allotments. The value of all real estate owned by an Osage Indian at the date of his death is includible in his gross estate with the exception of one exemption for a homestead allotment not in excess of 160 acres, and, in addition, another exemption for either agricultural lands not in excess of 160 acres or city property not exceeding $5,000 in cost. Rev. Rul. 55–418 revoked.§20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 62–83, 1962–1 C.B. 175.

138.3 Tribal governments; treated as states for certain purposes. A list is set forth to identify Indian tribal governments that are to be treated similarly to states for specified tax purposes under the Code during 1983 and 1984. §20.2055–1. (Sec. 601.201, S.P.R.; Secs. 61, 103, 170, 2055, 4041, 4221, 4253, 4483, '54 Code.)

Rev. Proc. 83–87, 1983–2 C.B. 606.

138.4 Trust properties; trust fund cash. The value of trust lands acquired either in the original allotment or by inheritance, original and inherited headrights, mineral headright income derived from royalties held in trust by the United States Government is not includible in the gross estate of a deceased Indian, where death occurred prior to receiving a patent in fee simple thereto; however, trust fund cash not directly derived from allotted lands is includible. Rev. Rul. 54–168 revoked.§20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 69–164, 1969–1 C.B. 220.

Information

(See: ADMINISTRATIVE: Publicity of information; Returns)

Inspection of records or returns

(See: ADMINISTRATIVE: Books and records; Returns)

Insurance

(See: Life insurance)

Interest

(See: ADMINISTRATIVE: Deficiencies; Overpayments)

Interests in property

(See also: Transfers; Valuation)

140.1 Agency rights in Texas mineral estate. At her death, decedent owned surface land and the agency mineral rights which she had acquired from Texas, the State retaining the mineral estate. Exercising her agency power, in accordance with the Texas Relinquishment Act, the decedent had entered into oil and gas leases with respect to certain portions of the property. The leases extended beyond the decedent's death and decedent and the State shared equally in bonuses, delay rentals, and royalties. All sums due had been paid prior to her death. *Held,* the agency rights do not constitute a separate interest i property under section 2033 of the Code. Th right to act as agent is inalienable except in co junction with the transfer of the land under th Act as once a valid lease has been executed th lessor can transfer all or part of the interest in th lease separately from the surface ownership. Th court established the fair market value of the ur used agency rights that it determined should b added to the surface value and included in th gross estate. (Sec. 2033, '54 Code.)

Mattie Roberts, 59 T.C. 128, Acq., 1973–2 C.B 3.

140.2 Annuity; partnership; survivin spouse successor in interest. The value of payments receivable by a surviving spouse as succe sor to her decedent husband's right to receive share of partnership income for a specified perio of time as a retirement benefit is includible in th decedent's gross estate.§20.2039–1. (Sec. 2039 '54 Code.)

Rev. Rul. 71–507, 1971–2 C.B. 331.

140.3 Annuity; profit-sharing plan amount payable in lump sum or installments. Decedent has been a participant in hi employer's non-contributory, profit-sharing pla until his retirement and thereafter an inactive participant to date of death. The plan provided tha benefits were payable at the discretion of the trustees in a lump sum or in installments during a period not exceeding 180 months. Decedent, upon hi retirement, requested but was denied a lump-sum payment of his interest. Instead, he was permitted as an inactive participant, to have his account segregated and to recommend investments at his own risk. The trustees made no distributions to decedent prior to his death. *Held,* the fund was at al times subject to the trustees' discretionary power the decedent did not constructively receive a portion of his interest therein prior to his death; and no portion thereof was includible in his gross estate. (Sec. 2039, '54 Code.)

Harold S. Brooks, 50 T.C. 667, Acq., 1969–1 C.B. 20.

140.4 Armed Forces; death benefit gratuity. The allowance equal to six months' pay paid by the U.S. Government because of the death of an officer or enlisted member of the Armed Forces does not constitute property of the decedent and is not includible in the gross estate of the decedent. (Sec. 2033, '54 Code.)

Rev. Rul. 55–581, 1955–2 C.B. 38.

140.5 Bequest in trust of remainder interest. To establish that a devise in trust of a remainder interest in both surface and subsurface rights in land would qualify for a charitable deduction, where a will failed to provide for withholding and adding to corpus such reserves for depletion of subsurface resources as would be considered adequate to maintain the corpus of the trust intact, it must be shown there is a charitable interest which is not contingent or defeasible.§§20.2031–7, 20.2055–2. (Secs. 2031, 2055; '54 Code.)

Rev. Rul. 60–162, 1960–1 C.B. 376.

140.6 Bequest of remainder interest in residence; furnishings. The remainder value of household furnishings contained in a deceased spouse's personal residence at the time of death in 1975, that are bequeathed to the surviving spouse for life and then to a charitable organization, does not quality as a deductible remainder interest in personal residence. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–165, 1976–1 C.B. 279.

140.7 Community property; decedent's interest; separate property; Texas. Separate property under Texas community property law that a decedent transferred to the spouse prior to death and which was held by the spouse as separate property, is not includible in the decedent's gross estate. Rev. Rul. 75–504 revoked. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 81–221, 1981–2 C.B. 178.

140.8 Community property; transferred to revocable trust. Husband and wife transferred their California community property to a revocable trust, reserving to themselves a life income interest therein. Upon the death of one of the spouses, one-half of the value of the community interest in the property held in the trust is includible under sections 2033, 2036, 2038 of the Code in determining the value of the decedent's gross estate. §§20.2033–1, 20.2036–1, 20.2038–1. (Secs. 2033, 2036, 2038; '54 Code.)

Rev. Rul. 66–283, 1966–2 C.B. 297.

140.9 Community property; wife's interest; Nevada. The interest of the wife in community property constitutes a vested interest under the laws of Nevada. Therefore, the value of one-half of the community property and one-half of the jointly owned property acquired with community funds is includible in her gross estate. (Sec. 2033, '54 Code.)

Rev. Rul. 55–605, 1955–2 C.B. 382.

140.10 Community property; wife's interest; New Mexico. As a result of changes in New Mexico law that equalized the community property interest of each spouse, the value of a wife's one-half interest in New Mexico community property is includible in her gross estate if she predeceases her husband after June 30, 1973. §20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 74–284, 1974–1 C.B. 276.

140.11 Death benefit; Public Safety Officers' Benefit Act. A death benefit paid under section 701(a) of the Public Safety Officers' Benefit Act to the survivor of a decedent who had been employed as a public safety officer is not includible in the decedent's gross estate. §§20.2033–1, 20.2039–1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 79–397, 1979–2 C.B. 322.

140.12 Death of remainderman before life tenant. Under the terms of an irrevocable trust, a decedent or his estate was entitled to receive certain property on the death without issue of the life tenant, a married woman aged 44 living with her husband, who had never had children, though was still believed to be capable of having issue. The value of the remainder interest, even though not susceptible of valuation under actuarial rules, should be evaluated in accordance with the general rules of the valuation of property and be included in the decedent's gross estate.§20.2031–1. (Sec. 2031, '54 Code.)

Rev. Rul. 61–88, 1961–1 C.B. 417.

140.13 Decedent's contingent legal fees. The right of a decedent's estate to receive payment for legal services performed by the decedent on a contingent fee basis constitutes an interest in property the value of which is includible in his gross estate.§81.13. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 55–123, 1955–1 C.B. 443.

140.14 Defeasible remainder in trust. A defeasible remainder interest in trust which is subject to termination at the will of another is an interest in property, and the value of such interest is includible in the remainderman's gross estate if the interest was not terminated prior to his death.§§20.2031–1, 20.2033–1. (Secs. 2031, 2033; '54 Code.)

Rev. Rul. 67–370, 1967–2 C.B. 324.

140.15 Deferred tax; election as to remainder interest. Interest on that portion of a deficiency attributable to the inclusion of a reversionary or remainder interest in decedent's gross estate is computed at the rate of four percent per annum from the due date of the tax (15 months after the date of a decedent's death), provided the executor elects to postpone the payment of that portion of the tax until six months after the termination of the precedent interest or interests in the property. (Secs. 6163, 6601; '54 Code.)

Rev. Rul. 56-622, 1956–2 C.B. 956.

140.16 Determination; effect of State trial court decree. Where Federal estate tax liability turns upon the character of a property interest held and transferred by the decedent under State law, Federal authorities are not bound by a determination made of such property interest by a State trial court in a proceeding in which the United States is not a party. State law as announced by the highest court of the State is to be followed, but where there is no decision by the highest court, Federal authority must apply what it finds to be the State law after giving "proper regard" to relevant decisions of other State courts.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Bosch, Second National Bank of New Haven, 387 U.S. 456, Ct. D. 1915, 1967–2 C.B. 337.

140.17 Disclaimer by executor of legatee; New York. A legacy that was disclaimed by the executor of a New York decedent within a reasonable period of time after the death of the testatrix and under New York law is not includible in the legatee's gross estate. (Secs. 2031, 2033; '54 Code.)

Edward E. Hoenig, 66 T.C. 471, Acq., 1978–1 C.B. 1.

140.18 Discretionary "wage dividend" and salary" death benefits. "Wage dividend" and "salary" death benefits paid by an employer, as a part of a discretionary practice not under any contract or agreement, to a decedent's wife were not includible in the gross estate under code sections 2033 or 2039. Under section 2033 decedents had only an expectancy with respect to the benefits and under section 2039 no contract or agreement existed. Acq. as to the issue under section 2033; Acq. in result as to the issue under section 2039. (Secs. 2033, 2039; '54 Code.)

William E. Barr, 40 T.C. 227, Acq. and Acq. in result, 1978–1 C.B. 1.

140.19 Exempted under local law; marital deduction. Property exempted from execution under local laws, which is set off absolutely to a widow from her deceased husband's estate, constitutes an interest in property acquired by inheritance and the value of such property qualifies for the marital deduction.§81.47. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 55–419, 1955–1 C.B. 458.

140.20 Farm; special use value and eligible joint interest elections. The portion of an eligible joint interest includible in a decedent's gross estate under section 2040(c) is computed using the fair market value as the "value of such interest" under section 2040(c)(1)(A) even though the estate has elected the special use valuation for the interest under section 2032A. (Secs. 2040, 2032A; '54 Code.)

Rev. Rul. 81–146, 1981–1 C.B. 468.

140.21 Foreign real estate transferred; retained life estate. The value of foreign real estate is includible in gross estate where the decedent transferred her interest in the property prior to the Revenue Act of 1962 but continued retention of the life estate until her death in 1965.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 69–165, 1969–1 C.B. 220.

140.22 Goodwill; valuation. Although the bylaws of a corporation contain a binding agreement, effective only upon a shareholder's death, providing for the sale to the corporation of the shareholder's interest in the business at a price which does not reflect consideration for goodwill, the Commissioner would not be precluded from evaluating the shareholder's interest in the business to include goodwill.§§81.10(c), 81.10(d). (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 157, 1953–2 C.B. 255.

140.23 Insurance proceeds; community property; Texas. A decedent who was a resident of Texas obtained an insurance policy on the decedent's life prior to marriage, paid a portion of the premiums from separate funds and a portion from community funds, and designated the decedent's spouse as beneficiary. The amount includible in the decedent's gross estate with respect to the insurance policy is reduced by one-half the amount of premiums paid with community funds. §§20.2033–1, 20.2042–1. (Secs. 2033, 2042; '54 Code.)

Rev. Rul. 80–242, 1980–2 C.B. 276.

140.24 Insurance proceeds; transferred to trust. The value of trust corpus established with proceeds of insurance on the life of decedent's predeceased husband is not includible in her estate where the insurer consents to a court authorized lump-sum distribution in lieu of monthly payments.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 70–84, 1970–1 C.B. 188.

140.25 Joint estates; tax lien; transferee's liability. A transfer of property by a surviving tenant of jointly owned property to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth serves to divest an existing estate tax lien as to that property but a like lien shall then attach to all the property of such surviving tenant.§301.6324–1. (Sec. 6324, '54 Code.)

Rev. Rul. 56–144, 1956–1 C.B. 563.

140.26 Joint tenancy; decedent murdered by other joint tenant. The gross estate of a decedent who was murdered by a person who had furnished the entire consideration for property that the decedent and the murderer owned as joint tenants with right of survivorship includes, under section 2033, one-half of the value of the jointly owned property plus the present value of the remainder interest in the other half, if state law provides either that legal title to a murder victim's interest in a joint tenancy cannot pass to the murdering survivor or that legal title passes but equitable title does not. No part of the value of the property is includible under section 2040.§§20.2033–1, 20.2040–1. (Secs. 2033, 2040; '54 Code.)

Rev. Rul. 78–166, 1978–1 C.B. 283.

140.27 Joint tenancy; murder of joint tenant by decedent. One-half the value of real property acquired with separate funds by a decedent who held the property as joint tenant with right of survivorship with another person, whom the decedent later murdered, is includible under section 2036 in the gross estate of the decedent in a state whose law provides either that legal title to a murder victim's interest in a joint tenancy cannot pass to the murdering survivor or that legal title passes but equitable title does not.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 78–167, 1978–1 C.B. 288.

140.28 Joint tenancy; transfers within 3 years of death. No portion of the value of real property purchased by one spouse more than three years before death and held by the spouses in joint tenancy is included in the purchaser's gross estate under section 2035 where qualified joint interests are created in that property within three years of the purchaser's death. §§23.1, 25.2515–1. (Secs. 2035, 2040, 2515; '54 Code.)

Rev. Rul. 82–159, 1982–2 C.B. 210.

140.29 Jointly held property; consideration furnished by surviving joint tenant. A surviving joint tenant had, prior to the decedent's death, purchased income-producing property with monies received as a gift from the decedent. The property was later sold at a gain due to appreciation and reinvestment of income, and the sale proceeds placed in a joint account with decedent. The portion of the sale proceeds attributable to appreciation in value and income reinvested during the surviving joint tenant's individual ownership of the property is consideration furnished by the surviving joint tenant, and only the amount of the original gift from the decedent to the surviving tenant is includible in the decedent's gross estate. §20.2040-1. (Sec. 2040, '54 Code.)

Rev. Rul. 79-372, 1979-2 C.B. 330.

140.30 Jointly held property; converted community property. A decedent and the decedent's spouse sold jointly held property that had been acquired while they resided in a community property state and with the proceeds purchased property in a common law state where they had recently moved. One-half of the value of the property held jointly at the decedent's death is excluded from the decedent's gross estate under section 2040. §20.2040-1. (Sec. 2040, '54 Code.)

Rev. Rul. 78-418, 1978-2 C.B. 236.

140.31 Jointly held property; divorce. A spouse purchased real property with separate funds and took title in the names of both spouses either as tenants by the entirety or as joint tenants with right of survivorship. In a state where a subsequent divorce converts a tenancy by the entirety or a joint tenancy into a tenancy in common, such a divorce would result in a gift of one-half the value of the property. In a state where a joint tenancy is not terminated by divorce, no gift results. Upon the contributor's death more than three years after the divorce the portion of the property that was not considered a gift is includible in the contributor's gross estate. §§20.2033-1, 20.2040-1, 25.2515-1. (Secs. 2033, 2040, 2515; '54 Code.)

Rev. Rul. 80-241, 1980-2 C.B. 273.

140.32 Jointly held property; mortgage balance outstanding. A decedent and the decedent's spouse each contributed cash toward the purchase of a residence as joint tenants with rights of survivorship and were jointly liable for a mortgage on the property, on which the decedent made all payments until death, after which the decedent's estate and spouse became jointly liable for the mortgage debt. Computations are shown on the amount includible in the decedent's gross estate under section 2040 and the amount deductible under section 2053 with respect to the mortgage indebtedness. §§20.2040-1, 20.2053-7. (Secs. 2040, 2053; '54 Code.)

Rev. Rul. 79-302, 1979-2 C.B. 328.

140.33 Jointly held property; refinanced mortgage balance outstanding. A decedent and the decedent's spouse each contributed cash toward the purchase of a residence as joint tenants with rights of survivorship and were jointly liable for a mortgage on the property, on which the decedent's spouse made payments. The mortgage was refinanced and both the decedent and the decedent's spouse made payments. Upon the decedent's death, the estate and the spouse became jointly liable for the mortgage debt. Computations are shown for the amount includible in the decedent's gross estate under section 2040 and the amount deductible under section 2053 with respect to the refinanced mortgage indebtedness. §§20.2040-1, 20.2053-7. (Secs. 2040, 2053; '54 Code.)

Rev. Rul. 81-184, 1981-2 C.B. 181.

140.34 Jointly held property; residence; second mortgage. A decedent and the decedent's spouse each contributed cash toward the purchase of a residence as joint tenants with rights of survivorship and were jointly liable for a mortgage on the property on which the decedent made all payments. A second mortgage was obtained on which the spouse made all the payments. Upon the decedent's death, the estate and the spouse became jointly liable for the mortgage debt with rights of contribution. Computations are shown for the amount includible in the decedent's gross estate under section 2040 and the amount deductible under section 2053 with respect to the mortgage indebtedness when the proceeds of the second mortgage were used either to make improvements to the residence or for purposes not related to the real estate. §§20.2040-1, 20.2053-7. (Ses. 2040, 2053; '54 Code.)

Rev. Rul. 81-183, 1981-2 C.B. 180.

140.35 Jointly owned mortgage; deceased spouse's interest. The value of a purchase money mortgage held by spouses as tenants by the entirety at the time of one spouse's death is unaffected by a provision that the mortgage is cancelled upon the death of the surviving spouse if it is held and owned by the survivor and the original mortgagor retains ownership of the mortgaged property. §§20.2031-4, 20.2040-1. (Secs. 2031, 2040; '54 Code.)

Rev. Rul. 76-112, 1976-1 C.B. 276.

140.36 Jointly owned property; insurance proceeds; joint and mutual will. Jointly owned property, restricted by a joint and mutual will as to its ultimate distribution, and life insurance proceeds passing to the surviving wife qualify for the marital deduction. Upon her death, the total value of the remainder of the property held jointly with her husband and the proceeds of life insurance on his life are includible in her gross estate. §§20.2036-1, 20.2056(b)-1. (Secs. 2036, 2056; '54 Code.)

Rev. Rul. 71-51, 1971-1 C.B. 274.

140.37 Jointly owned stock; elective stock dividend. An individual acquired common stock of a corporation and placed it in a joint tenancy with rights of survivorship. Before the individual's death, the corporation distributed a one-share-for-four stock dividend and another dividend that was paid in stock in lieu of cash at the joint tenants' election. The value of all the stock except one-half the elective stock dividend is includible in the decedent's gross estate. §20.2040-1. (Sec. 2040, '54 Code.)

Rev. Rul. 80-142, 1980-1 C.B. 197.

140.38 Life estate; Swiss inheritance law. Where pursuant to the laws of Descent and Distribution of Switzerland entitling the decedent to the usufruct for life in three-fourths of the estate of her husband, the decedent and the remaindermen established a trust consisting of that portion of her husband's estate and reserving a life estate to the decedent, no portion of the corpus of the trust is includible in the gross estate of the decedent. §§20.2033-1, 20.2036-1. (Secs. 2033, 2036; '54 Code.)

Rev. Rul. 66-86, 1966-1 C.B. 216.

140.39 Nonresident alien; certificate of deposit; U.S. bank fiduciary. A nonresident alien decedent's interest in a trust is treated as property without the U.S. under section 2105(b), and is thus excludable from the gross estate, even though the trust funds are held in a U.S. bank certificate of deposit at the decedent's death. Rev. Rul. 69-596 clarified. §§20.2033-1, 20.2103-1, 20.2105-1. (Secs. 861, 2033, 2103, 2105; '54 Code.)

Rev. Rul. 82-193, 1982-2 C.B. 219.

140.40 Osage Indian allottees. The value of all real estate owned by an Osage Indian at the date of his death is includible in his gross estate with the exception of one exemption for a homestead allotment not in excess of 160 acres, and, in addition, another exemption for either agricultural lands not in excess of 160 acres or city property not exceeding $5,000 in cost. Rev. Rul. 55-418 revoked.§20.2033-1. (Sec. 2033, '54 Code.)

Rev. Rul. 62-83, 1962-1 C.B. 175.

140.41 Possibility of reverter in transferred property. Where the interest retained by a decedent in transferred property is a possibility of reverter which is obliterated by his death, or, where the interest of a decedent in a trust created by another person is a contingent remainder which lapses at his death, such interest is not considered as an interest in property for the purpose of section 811(a) of the Code. However, under section 811(c)(1) the retention of a reversionary interest may cause inclusion of the transferred property in the gross estate.§81.3. (Sec.811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 55-438, 1955-2 C.B. 601.

140.42 Power of appointment; credit for tax on prior transfers. There is a transfer to a decedent-transferee of a beneficial interest in property for purposes of the credit for tax on prior transfers, if the property interest meets the requirements of a general power of appointment within the meaning of section 2041 of the Code at the time of the transferor's death.§§20.2013-1, 20.2041-1. (Secs. 2013, 2041; '54 Code.)

Rev. Rul. 66-38, 1966-1 C.B. 212.

140.43 Prior transfers; trust; contingent remainder interest. A legally binding contract was entered into prior to the death of the life tenant between the two equal testamentary trust beneficiaries of contingent remainder interests providing that, if either predeceased the life tenant, then the survivor would transfer one-half of the trust corpus received to the heirs of the deceased. Upon the death of one of the beneficiaries prior to the death of the life tenant, the contract results in a transfer for purposes of section 2037. §§20.2033-1, 20.2037-1. (Secs. 2033, 207; '54 Code.)

Rev. Rul. 82-24, 1982-1 C.B. 134.

140.44 Property settlement agreement; incorporated into divorce decree. The debt of a decedent founded on the surrender of marital right incurred under a separation agreement, which State law bound the court to incorporate in the divorce decree, is not deductible under section 2053(a)(3). §§20.2043-1, 20.2053-4. (Secs. 2043, 2053; '54 Code.)

Rev. Rul. 75-395, 1975-2 C.B. 370.

140.45 Property settlement agreement; incorporated into divorce decree. A divorce court that has the power to decree a settlement of all marital rights ordered that if a federal employee died prior to retirement, the lump-sum refund of the employee's contribution to the U.S. Civil Service Retirement System, plus any interest accrued thereon, would be payable to the employee's former spouse. The employee died prior to retirement. The refund is includible in the employee's gross estate under section 2039 and is deductible under section 2053(a)(4). §§20.2039-2, 20.2053-7. (Secs. 2039, 2053; '54 Code.)

Rev. Rul. 80-81, 1980-1 C.B. 203.

140.46 Property settlement powers vested in divorce court. If a divorce court has power to decree a settlement of all property rights or to vary the terms of a prior settlement agreement, and does approve the agreement, any indebtedness arising out of such settlement is not considered to be founded on a promise or agreement; rather it is considered to be founded upon such court decree and is, therefore, deductible from gross estate.

E.T. 19 modified.§§20.2043–1, 20.2054–4. (Secs. 2043, 2053; '54 Code.)

Rev. Rul. 60–160, 1960–1 C.B. 374.

140.47 Qualified disclaimer; election to treat property as qualified terminable interest property. A surviving spouse' disclaimer of property in accord with the requirements of section 2518 is an effective disclaimer even though a section 2056(b)(7) election has been made with respect to the property by the executor of the estate. §20.2056(b)–1. (Secs. 2056, 2518; '54 Code.)

Rev. Rul. 83–26, 1983–1 C.B. 234.

140.48 Realty; nonresident citizen of Norway. The gross estate of a decedent citizen and resident of Norway includes only one-half of the value of real property located in a State that recognizes the vested interest of the spouse in Norwegian community funds used to purchase the property in the decedent's name.§§20.2033–1, 20.2103–1. (Secs. 2033, 2103; '54 Code.)

Rev. Rul. 72–443, 1972–2 C.B. 531.

140.49 Redeemed stock; installment payments during lifetime. Under terms of a contract, decedent sold her stock in a family-owned corporation to the corporation in return for payment of $6,000 plus monthly payments of $1,000 to continue for 12 years or until her death, whichever occurred first. When she died, the balance of the purchase price was not includible in the decedent's gross estate, since she retained neither possession, enjoyment, nor the right to income from the transferred stock. (Sec. 2036, '54 Code.)

Ruby Louise Cain, 37 T.C. 185, Acq., 1962–2 C.B. 4.

140.50 Residence; charitable remainder partial interest. No charitable deduction is allowable for a remainder interest in a decedent's personal residence that, upon termination of a life estate, vested in a charitable organization and an individual as equal tenants in common because the charity was not given the entire remainder interest. Distinguished by Rev. Rul. 77–385. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–544, 1976–2 C.B. 288

140.51 Residence; remainder interest; entire interest in sale proceeds. No charitable deduction is allowable for a remainder interest in a decedent's personal residence bequeathed to charity under a will which provides that the remainder is to be sold upon the life tenant's death and the entire sale proceeds are to be paid to charity. Rev. Rul. 76–543 amplified. Distinguished by Rev. Rul. 83–158. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 77–169, 1977–1 C.B. 286.

140.52 Residence; remainder interest; entire interest in sale proceeds or residence itself. A charitable deduction is allowed under section 2055(a) for the value of a charitable remainder interest in the proceeds from the sale of a decedent's personal residence if, under local law, the charity has the option to take the residence instead of the sale proceeds. Rev. Ruls. 76–543 and 77–169 distinguished. §20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 83–158, 1983–2 C.B. 159; Eliza W. Blackford, 77 T.C. 90. Acq., 1983–2 C.B. 1.

140.53 Residence; remainder interest; partial interest in sale proceeds. No charitable deduction is allowable for a remainder interest in a decedent's personal residence bequeathed to charity under a will which provides that the remainder is to be sold upon life tenant's death and a part of the sale proceeds is to be paid to charity. Amplified by Rev. Rul. 77–169. Distinguished by Rev. Rul. 83–158 §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–543, 1976–2 C.B. 287.

140.54 Retained; Family Estate trust. The gross estate of a grantor-decedent must include, under sections 2036 and 2038, the value of any assets held by a so-called "Family Estate" which derive from his transfers of property to the "Family Estate" in exchange for units of beneficial interest, where he continued to enjoy the transferred property until his death and, with the other trustees, held a power to amend or terminate at his death. Further, the value of the units of beneficial interest, to the extent not included otherwise, must be included in the decedent's gross estate under section 2033. §§20.2033–1, 20.2036–1, 20.2038–1. (Secs. 2033, 2036, 2038; '54 Code.)

Rev. Rul. 75–259, 1975–2 C.B. 361.

140.55 Retained; reciprocal trust. Decedent transferred personal and real property to his wife, but retained control over such property. Later, decedent and his wife executed two interrelated trusts substantially identical and created at approximately the same time. The trust created by the wife included all the property originally transferred to her by the decedent. Both trusts were part of a single transaction designed and carried out by the decedent. The transfers in trust left each party in the same economic positions as before. Thus, decedent's estate remained undiminished to the extent of the value of his wife's trust, and the value of his estate must accordingly be increased by the value of that trust.§20.2036–1. (Sec. 2036, '54 Code.)

Grace, 395 U.S. 316, Ct. D. 1927, 1969–2 C.B. 173.

140.56 Retained; timber rights; timberland transferred. No part of the value of land is includible in the gross estate of a taxpayer who conveyed timber rights for five years to one person for cash and four unsecured promissory notes payable on the anniversary dates of the sale, sold the land to another person a month later, and died with 23 months remaining under the conveyance of timber rights with one note unpaid.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 77–193, 1977–1 C.B. 273.

140.57 Retained; timber rights; timberland transferred. The entire value of forest land given to an individual by a decedent who reserved for ten years all timber rights, which constitute personal property under the law of the state in which the timber is located, and died during the ten-year period without having removed any timber is includible in the decedent's gross estate.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 78–26, 1978–1 C.B. 286.

140.58 Reversionary trust; valuation. An illustration is given of the method for determining whether and to what extent a decedent's gross estate should include an interest in real property transferred in trust by the male decedent to a female donee, pursuant to an agreement which provided that the decedent would give the donee a life interest in income-producing real property, and that the property would revert to the decedent if he survived the donee; but, if the donee survived the decedent, then the property would pass to the decedent's child or the child's estate upon the donee's death. §20.2037–1. (Sec. 2037, '54 Code.)

Rev. Rul. 76–178, 1976–1 C.B. 273.

140.59 Simultaneous deaths; insurance proceeds; spouses. An individual who owned an insurance policy of his spouse's life naming the trustee of a living trust as beneficiary, and who pursuant to local law was presumed to have survived his spouse when they died simultaneously, is deemed to have made a gift of the insurance proceeds to the trustee subject to the provisions of section 2501 and such proceeds are also includible in his gross estate under section 2036.§§20.2036–1, 25.2511–1. (Secs. 2036, 2511; '54 Code.)

Rev. Rul. 77–48, 1977–1 C.B. 292.

140.60 Simultaneous deaths; life insurance. The value of insurance to be included in the estates of two individuals, each of whom owned an insurance policy on the life of the other and both of whom died in circumstances in which each was considered to have been the survivor under the state's Uniform Simultaneous Death Act, is the interpolated terminal reserve at the date of the insured decedent's death plus the proportionate part of the gross premium last paid before the date of the insured's death that covers the period extending beyond that date.§§20.2031–8, 20.2033–1. (Secs. 2031, 2033; '54 Code.)

Rev. Rul. 77–181, 1977–1 C.B. 272.

140.61 Simultaneous deaths; marital deductions. In states which have adopted the Uniform Simultaneous Death Act, a wife will be presumed to have survived her husband in a situation where it cannot be determined that they have died other than simultaneously, with respect to half of the property held by the entirety. This property passes to and is includible in her estate, although the property has been purchased entirely with consideration furnished by the husband. Therefore, the husband's estate is entitled to a marital deduction to the extent of the one-half interest passing to the wife. Modified by Rev. Rul. 76–303.§§20.2033–1, 20.2040–1, 20.2056(a)–1. (Secs. 2033, 2040, 2056; '54 Code.)

Rev. Rul. 66–60, 1966–1 C.B. 221.

140.62 Simultaneous deaths; tenants by the entirety. In states that have adopted the Uniform Simultaneous Death Act, a husband and wife are each considered to have survived with respect to one-half of property held by them as tenants by the entirety if it cannot be determined that they died other than simultaneously. In the absence of evidence to indicate the wife furnished any consideration for the property, the entire value of the property is includible in the husband's gross estate and a one-half interest in the wife's gross estate. Rev. Rul. 66–60 modified. §§20.2033–1, 20.2040–1. (Secs. 2033, 2040; '54 Code.)

Rev. Rul. 76–303, 1976–2 C.B. 266.

140.63 Spouse's interest; Texas. A husband, a resident of Texas, made a testamentary devise to his wife and two children of his entire separate estate and the entire community estate owned by himself and his wife. The wife, pursuant to an election contained in her deceased husband's will, chose to take under the will. *Held*, the value of the wife's interest in the community estate is not a part of the husband's gross estate notwithstanding her election to take under the will. G.C.M. 7773 superseded.§20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 67–383, 1967–2 C.B. 325.

140.64 Spouse's interest; Texas. Under Texas law, the bequest of a remainder interest in property to the decedent's children in a later clause of the will prevails over the bequest of the same property to the surviving spouse "in fee simple and absolute" and the surviving spouse does not have an absolute interest in the property that qualifies for a marital deduction.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 77–98, 1977–1 C.B. 288.

140.65 State gift tax paid for transfer included in donor's state inheritance tax base. A state gift tax paid by a donor on a transfer later included in the donor's state inheritance tax base, and regarded as an advance payment of state inheritance tax, does not create an asset of the estate for purposes of section 2033 and is not includible in the decedent's gross estate at death. A credit under section 2011 is not allowable for any amount of inheritance tax considered paid by a credit of state gift tax paid before death. A state gift tax unpaid at death, which gives rise to a credit against the state inheritance tax when paid, is not allowable as a credit under section 2011, but is deductible as a claim against the estate under section 2053. Rev. Ruls. 71–355 and 75–63 revoked. §§20.2011–1, 20.2033–1, 20.2053–6. (Secs. 2011, 2033, 2053; '54 Code.)

Rev. Rul. 81–302, 1981–2 C.B. 170; Grace E. Lang, 64 T.C. 404, Acq., 1981–2 C.B. 2; George E. P. Gamble, 69 T.C. 942, Acq., 1981–2 C.B. 1.

140.66 State public housing agency bonds. Bonds that are issued by a state public housing agency for a low-income housing project are included in the gross estate of the deceased owner of the bonds, even though the U.S. Housing Act of 1937 exempts them from all taxation. §20.2033–1. (Secs. 1001, 2033; '54 Code.)

Rev. Rul. 81–63, 1981–1 C.B. 455.

140.67 Surviving spouse. The marital deduction was allowable with respect to the full value of property interests passing to the surviving spouse under a decedent's will where the transfer was in lieu of lesser rights which she had under an antenuptial agreement. Any additional claim asserted against the estate by reason of such agreement, however, was not allowable as a deduction for claims against the estate.§81.47(a). (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 54–446, 1954–2 C.B. 303.

140.68 Survivor's loss benefits; no-fault automobile insurance. Survivor's loss benefits payable under a no-fault automobile insurance policy are not property in which the decedent had an interest at death and are not includible in the gross estate. §§20.2033–1, 20.2042–1. (Secs. 2033, 2042; '54 Code.)

Rev. Rul. 82–5, 1982–1 C.B. 131.

140.69 Survivorship annuity; Mine Safety Act. The value of the annuity payable under title IV of the Federal Coal Mine Health and Safety Act of 1969 to the surviving spouse of a coal miner who died due to black lung disease is not includible in the decedent's gross estate. §§20.2033–1, 20.2039–1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 76–102, 1976–1 C.B. 272.

140.70 Survivorship annuity; professional service corporation's retirement plan. The value of a survivorship annuity receivable under the qualified retirement plan of a professional service corporation by the spouse of a decedent who had been an employee and stockholder of the corporation is excludable from the decedent's gross estate under section 2039(c) to the extent attributable to employer contributions. §20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 77–96, 1977–1 C.B. 277.

140.71 Survivorship annuity; Railroad Retirement Act. An annuity or other payment specified in subsection (a), (b), (c), (d), or (f)(1) of section 5 of the Railroad Retirement Act of 1937, as amended, is not includible in the gross estate of a deceased railroad employee. However, the value of payments under section 5(f)(2) of the Act, in which the decedent may designate the beneficiary, is includible in the decedent's gross estate. Modified to provide that lump-sum benefits payable under section 5(f)(2) of the Act to a surviving spouse or parent under age 60 is not includible in a decedent's gross estate.§§20.2033–1, 20.2039–1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 60–70, 1960–1 C.B. 372; Rev. Rul. 73–316, 1973–2 C.B. 318.

140.72 Survivorship annuity; Social Security; monthly benefits. The value of monthly benefits payable to a decedent's spouse under section 402(e) of the Social Security Act is not includible in the decedent's gross estate under section 2033 or 2039. §§20.2033–1, 20.2039–1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 81–182, 1981–2 C.B. 179.

140.73 Survivorship annuity; veteran. The value of an annuity payable as "Veterans' Benefits" to the surviving spouse of a deceased veteran is not includible in the veteran's gross estate under sections 2033 or 2039. §§20.2033–1, 20.2039–1. (Secs. 2033, 2039; '54 Code.)

Rev. Rul. 76–501, 1976–2 C.B. 267

140.74 Tenancy by the entirety; husband's interest. The amount includible in a husband's gross estate on account of property which was held under a tenancy by the entirety and which was acquired by purchase is that portion of the fair market value of the property as of the date of his death, or other applicable valuation date, that the amount of the purchase price contributed by him bears to the total purchase price of the property. Amplified by Rev. Rul. 58–130 with respect to adjustment of basis for income tax purposes. (Sec. 2040, '54 Code.)

Rev. Rul. 56–519, 1956–2 C.B. 123.

140.75 Transfers in contemplation of death; tenants by entirety. Where property purchased by a husband from his separate funds and held in the name of himself and his wife as tenants by the entireties or as joint tenants is transferred in contemplation of death, only one-half of the value of the property is includible in each co-tenant's gross estate. Rev. Rul. 57–488 revoked.§20.2036–1. (Secs. 2035, 2036, 2040, '54 Code.)

Rev. Rul. 69–577, 1969–2 C.B. 173; A. Carl Borner, 25 T.C. 584, Don Murillo Brockway, 18 T.C. 488, Edward Carnell, 25 T.C. 654, Nonacqs. withdrawn and Acqs. substituted, Julia Crawford Horner, 36 T.C. 337, Acq., 1969–2 C.B. xxiii, xxiv.

140.76 Transfers in contemplation of death; tenants by entirety. One-half the value of real property held by a married couple as tenants by the entirety and subsequently transferred to a third party in contemplation of the death of one of the spouses, in a state whose law provides that a tenancy by the entirety cannot be severed by either spouse acting alone and that each spouse is entitled to one-half the income from such property, is includible in the estate of the deceased spouse, even though the other spouse had purchased the property with separate funds and had elected not to report a gift at the time they took title to the property. Clarified by Rev. Rul. 81–227. §20.2035–1. (Sec. 2035, '54 Code.)

Rev. Rul. 76–348, 1976–2 C.B. 267.

140.77 Transfers within 3 years of death; tenants by entirety. When the decedent and the decedent's spouse transfer joint tenancy property, as to which there was no election under section 2515(c), within 3 years of the decedent's death, one-half of the value of the property is includible in the decedent's gross estate under section 2035 and the other one-half of the value is reflected in the estate tax computation as an adjusted taxable gift under section 2001. Rev. Rul. 76–348 amplified. §25.2515–1. (Secs. 2001, 2035, 2515; '54 Code.)

Rev. Rul. 81–227, 1981–2 C.B. 168.

140.78 Uncashed social security benefit checks. The value of a decedent's interest in uncashed social security benefit checks, jointly payable to him and his surviving wife, is not includible in his gross estate. §§20.2033–1, 20.2041–1. (Secs. 2033, 2041; '54 Code.)

Rev. Rul. 75–145, 1975–1 C.B. 298.

140.79 Undivided portion; transfers. Application of section 2055(e) of the Code to the deduction for certain transfers with respect to estates of decedents dying after 1969 and before October 4, 1972 where the interest transferred is an undivided portion of an entire interest in property.§20.2055–2. (Sec. 601.105, S.P.R.; Sec. 2055, '54 Code.)

Rev. Proc. 72–45, 1972–2 C.B. 826.

140.80 Unexercised right to take against will; deceased widow. A widow whose husband failed to provide for her in his will and who could have elected within six months from the date the Letters Testamentary were granted to take a share of his estate against the provisions of the will, but died during this period without making the election, did not possess either an interest in property or a general power of appointment, the value of which is includible at her death in her gross estate.§§20.2033–1, 20.2041–1. (Secs. 2033, 2041; '54 Code.)

Rev. Rul. 74–492, 1974–2 C.B. 298.

140.81 U.S. savings bonds. The estate and gift tax status of United States savings bonds that are purchased wholly or partly by an individual and registered in several authorized forms is restated. Mim. 5202 superseded.§§20.2033–1, 20.2035–1, 20.2040–1, 25.2511–1. (Secs. 2033, 2035, 2040, 2511; '54 Code.)

Rev. Rul. 68–269, 1968–1 C.B. 399.

140.82 Usufruct. A usufruct, created under Louisiana law, the value of which was included in the gross estate of the transferor, is a "beneficial interest in property" which was the subject of a "transfer" for the purpose of the credit for tax on prior transfers; the credit may be applied notwithstanding the fact that the usufruct is not included in the transferee decedent's estate.§20.2013–5. (Sec. 2013, '54 Code.)

Rev. Rul. 66–271, 1966–2 C.B. 430.

140.83 Veteran's personal property passing to U.S. The value of a deceased veteran's personal property that passes to the U.S. pursuant to 38 U.S.C. 5220 is not deductible from the decedent's estate as a pledge under section 20.2053–5 of the regulations in a situation where the veteran was not competent to enter into a contract at any time while in a V.A. hospital, but is deductible as a liability imposed by law. §20.2053–4. (Sec. 2053, '54 Code.)

Rev. Rul. 76–542, 1976–2 C.B. 282.

140.84 Veteran's personal property passing to U.S. as trustee. The value of personal property of a deceased veteran passing to the U.S. as trustee for the General Post Fund persuant to the provisions of 38 U.S.C. 5220(a) is includible in the veteran's gross estate and is deductible in full as a claim against the estate for a charitable pledge. §§20.2033–1, 20.2053–5, 20.2055–1. (Secs. 2033, 2053, 2055; '54 Code.)

Rev. Rul. 75–533, 1975–2 C.B. 359.

140.85 Veteran's property escheating to U.S. The value of a deceased veteran's funds derived from benefits payable under laws administered by the Veterans' Administration that escheat to the U.S. for lack of heirs pursuant to 38 U.S.C. section 3202(e) is includible in the decedent's gross estate under section 2033 and is allowable as a deduction under section 2053.§§20.2033–1, 20.2053–4. (Secs. 2033, 2053; '54 Code.)

Rev. Rul. 78–14, 1978–1 C.B. 281.

Jeopardy assessments
(See: ADMINISTRATIVE: Assessments)

Joint estates
(See: Interests in property)

Levy
(See: ADMINISTRATIVE)

Liability for tax
(See: ADMINISTRATIVE)

Liens
(See: ADMINISTRATIVE)

Life insurance

142.1 Alternate valuation; insurance on life of another. Where a decedent owned life insurance policies on another person and that person died during the alternate valuation period, the increase in the value of the policies during that period is also includible in the decedent's gross estate, if the executor has elected to use the alternate valuation date provisions.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 63–52, 1963–1 C.B. 173.

142.2 Alternate valuation; interim income. The valuation to be used where the executors of an estate elect the alternate valuation method in certain factual situations involving stock rights, stock dividends, insurance proceeds, and interest bearing obligations received or disposed of within the year following the decedent's death is set forth.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 58–576, 1958–2 C.B. 625.

142.3 Assignment of single-premium policies purchased with annuities. Decedent took out six single premium insurance policies on her life in conjunction with certain annutiy policies. Several years prior to her death in 1946 she irrevocably assigned the life insurance policies to her sons and they cashed them in for their cash surrender value. *Held,* the proceeds of the insurance policies are not includible in decedent's gross estate. The two types of policies cannot be aggregated and treated as a single investment to make the transfer of the life insurance policies a transfer of a remainder interest in property in respect of which the decedent had retained life income. (Sec. 811(c), '39 Code; Sec. 2036, '54 Code.)

Lillie G. Hutchinson, 20 T.C. 749, Nonacq., 1953–2 C.B. 8.

142.4 Auto liability policy; uninsured motorist provision. The value of amounts recoverable for wrongful death under the uninsured motorist provision contained in the decedent's automobile liability policy as prescribed by the Virginia Code is not includible in the decedent's gross estate either under section 2033 of the Code as property in which decedent had an interest at the time of his death, or under section 2042 of the Code as amounts representing insurance under a policy on the life of the decedent.§§20.2033–1, 20.2042–1. (Secs. 2033, 2042; '54 Code.)

Rev. Rul. 68–88, 1968–1 C.B. 397.

142.5 Business insurance. Proceeds of an insurance policy purchased by a business associate to acquire the decedent's share in the business are not includible in gross estate where the associate pays the premiums and retains all incidents of ownership in the policy. (Sec. 2033, '54 Code.)

Rev. Rul. 56–397, 1956–2 C.B. 599.

142.6 Combination insurance and annuity contract. The proceeds of the life insurance portion of single-premium life insurance policy and life annuity contract combinations are not includible in the gross estate of the insured as a transfer with income retained where such proceeds are payable to named beneficiaries and together with all rights under the insurance policy have been irrevocably and completely assigned by the insured. Rev. Rul. 54–552 modified.§§81.18, 20.2036–1. (Sec. 811(c), '39 Code; Sec. 2036, '54 Code.)

Rev. Rul. 54–552, 1954–2 C.B. 284; Rev. Rul. 65–69, 1965–1 C.B. 440.

142.7 Combination insurance and annuity contract. The proceeds of the life insurance portions of single-premium life insurance and annuity policy combinations are not includible in the gross estate of the insured where such proceeds are payable to named beneficiaries and have been irrevocably assigned to them by the insured.§81.18. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Fidelity-Philadelphia Trust Co., Exrs. Mary H. Haines, 356 U.S. 274, Ct. D. 1824, 1958–1 C.B. 557.

142.8 Community property; Louisiana. Treatment of policies and the proceeds therefrom under the community property laws of Louisiana where the insured at death possessed incidents of ownership in the policies which had been taken out by him is set forth. The premium payments were made entirely with separate funds of either spouse, with separate funds of both spouses, combined, entirely with community funds, or in part with the separate funds of the insured and in part with community funds. The beneficiary is (1) anyone other than the insured's estate or surviving spouse, (2) the surviving spouse, or (3) the insured's estate.§§81.26, 81.27, 81.36, 81.47(a), 86.2. (Secs. 811(g), 812(b), 812(e), 1000, '39 Code; Secs. 2042, 2051, 2056, 2511, '54 Code.)

Rev. Rul. 232, 1953–2 C.B. 268.

142.9 Community property; Louisiana. Louisiana community property funds were used to pay the premiums on an insurance policy, applied for by the husband, on the now deceased wife. *Held,* no part of the proceeds was includible in the decedent's estate; the decedent intended the policy to be the husband's separate property and he possessed all incidents of ownership therein. Furthermore, the husband is not liable as a transferee either for the deficiency in estate tax by reason of the legal usufruct of the surviving spouse under State law or for the insurance proceeds received. (Acq. in result as to the ownership; Acq. as to the transferee liability) (Secs. 2042, 6901; '54 Code.)

William E. Bergman, 66 T.C. 887, Acq. in result, 1976–2 C.B. 1.

142.10 Community property; Louisiana. A Louisiana resident was the owner-beneficiary of insurance policies on the life of the individual's spouse. Premiums were paid with community funds, and the owner retained the right to change the beneficiary. The policies were the separate property of the owner-beneficiary, and, upon the death of the insured, no portion of the proceeds were includible in the insured's gross estate. (Sec. 2042, '54 Code.)

Viola F. Saia, 61 T.C. 515, Nonacq., 1978–2 C.B. 4.

142.11 Community property; Louisiana and Texas. In Louisiana or Texas a married man who purchases life insurance in favor of a beneficiary other than his estate possesses incidents of ownership in the policy, one-half in his own right and one-half as agent of his wife. Upon death, one-half of the proceeds of the policy is includible in his gross estate and the remaining one-half becomes an absolute gift by the wife. If the wife predeceases the husband, one-half value of the policy is includible in her gross estate as her interest in a community asset or as a revocable transfer. Modified by Rev. Rul. 75–100 to remove the implication that one-half the "cash surrender value" is the includible "value of the policy" at the date of the death of the uninsured spouse.§§81.20, 81.27, 86.2. (Secs. 811(g), 1000, '39 Code; Secs. 2042, 2511, '54 Code.)

Rev. Rul. 48, 1953–1 C.B. 392.

142.12 Community property; Texas. Where an insured domiciled in Texas takes out a policy of life insurance, one premium being paid out of the insured's separate funds before marriage and the balance of the premiums paid out of community funds, the policy constitutes the separate property of the insured and the proceeds are includible in his gross estate; however, a claim by the community for reimbursement for premiums paid with community funds against the insured's estate may be allowed. Modified by Rev. Rul. 80–242. §§81.26, 81.27, 81.36, 81.47(a). (Secs. 811(g), 812(b), 812(e), '39 Code; Secs. 2042, 2051, 2056, '54 Code.)

Rev. Rul. 54–272, 1954–2 C.B. 298.

142.13 Community property; Texas. A decedent who was a resident of Texas obtained an insurance policy on the decedent's life prior to marriage, paid a portion of the premiums from separate funds and a portion from community funds, and designated the decedent's spouse as beneficiary. The amount includible in the decedent's gross estate with respect to the insurance policy is reduced by one-half the amount of premiums paid with community funds. §§20.2033–1, 20.2042–1. (Secs. 2033, 2042; '54 Code.)

Rev. Rul. 80–242, 1980–2 C.B. 276.

142.14 Community property; Texas. Where a husband and wife domiciled in Texas purchased concurrently with community funds substantially identical policies of life insurance on the life of each other, each naming the other as owner and beneficiary, the presumption under Texas law that the policies are community property will prevail unless it is clearly shown that gifts were intended. As community property, one-half of the insurance proceeds from the policy on the life of the husband upon his death is includible in his gross estate under section 2042 of the Code. Furthermore, one-half of the value of the policy on the life of the wife is includible in his gross estate under section 2033 of the Code.§§20.2033–1, 20.2042–1. (Secs. 2033, 2042; '54 Code.)

Rev. Rul. 67–228, 1967–2 C.B. 331.

142.15 Community property; Texas. A Texas-resident husband and wife had owned for some time, as community property, an ordinary life insurance policy on the husband's life designating their children as beneficiaries. The wife predeceased her husband by 10 days, her entire estate was bequeathed to the children, and there was no settlement of her interest in the policy prior to the husband's death. The amount includible in the wife's gross estate is one-half the value of the policy, on the date of her death, determined by the terminal-reserve method under section 20.2031(a)(2) of the regulations and one-half the value of the policy proceeds is includible in the husband's gross estate. Rev. Rul. 48 modified. §§20.2031–8, 20.2033–1, 20.2042–1. (Secs. 2031, 2033, 2042; '54 Code.)

Rev. Rul. 75–100, 1975–1 C.B. 303.

142.16 Community property; Texas; simultaneous deaths. A husband and wife who were residents of Texas owned an insurance policy on the life of one of the spouses as community property. Their designation of a child as beneficiary of the policy was revocable prior to death. They died simultaneously in 1977. One-half the policy proceeds is includible in the gross estate of each spouse. §20.2042-1. (Secs. 2035, 2038, 2042; '54 Code.)

Rev. Rul. 79-303, 1979-2 C.B. 332.

142.17 Corporation as beneficiary; stock redemption. Proceeds of a life insurance policy on a decedent's life, payable to a wholly owned corporation of the decedent and then to the decedent's estate pursuant to a stock redemption agreement, should be reflected in the valuation of the decedent's stock, which is included in the decedent's gross estate under section 2033. The insurance proceeds are not separately included in the decedent's gross estate under section 2042. §§20.2031-2, 20.2033-1, 20.2042-1. (Secs. 2031, 2033, 2042; '54 Code.)

Rev. Rul. 82-85, 1982-1 C.B. 137.

142.18 Corpus of trust; securities. The decedent was assigned certain life insurance policies by her husband. On June 4, 1932, decedent created an irrevocable trust and transferred to it all the insurance policies along with separate stock powers covering securities. The decedent died on March 11, 1954. *Held,* the value of the insurance policies and the value of the securities required to produce income sufficient to pay premiums thereon, comprising part of the corpus of the trust created on June 4, 1932, are not includible in the decedent's gross estate. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Lena B. Arents, 34 T.C. 274, Nonacq., 1961-2 C.B. 6.

142.19 Damages; airplane accident while passenger. Amounts received from an insurance company by an executor, in settlement of a claim against the carrier for damages arising from the decedent's death in an airplane accident do not constitute life insurance proceeds. However, had the contract between the insurance carrier and the owner of the airplane provided payment of an agreed amount to the estate of any passenger who died as a result of an accident while on the plane, the acceptance of such amount would have constituted insurance receivable by the executor and includible in gross estate. (Sec. 2042, '54 Code.)

Rev. Rul. 57-54, 1957-1 C.B. 298.

142.20 Divorce settlement. Proceeds of insurance policies on decedent's life payable to his former wife under an agreement which was by its express terms to become effective only upon approval by the court in pending divorce proceedings are not includible in decedent's gross estate where the agreement was ratified and approved by the court and made a part of the divorce decree by reference. At the time of divorce, under applicable State law, the wife acquired an absolute interest in the benefits under the policies and at the time of his death, decedent had no incidents of ownership in the policies.§81.27. (Sec. 811(g), '39 Code; Sec. 2042, '54 Code.)

Rev. Rul. 54-29, 1954-1 C.B. 186.

142.21 Flight accident insurance proceeds. Flight accident insurance policies are, in effect, insurance taken out on the "life of the decedent" within the meaning of section 2042 of the Code. Therefore, proceeds from them are includible in the decedent's gross estate. Estate tax liability for policies "with respect to which the decedent possessed at his death any of the incidents of ownership" depends on a general legal power to exercise ownership, without regard to the owner's ability to exercise it at a particular moment. §20.2042-1. (Sec. 2042, '54 Code.)

Noel, 380 U.S. 678, Ct. D. 1893, 1965-2 C.B. 371.

142.22 Flight accident insurance proceeds; retained ownership. An airline passenger purchased an accident insurance policy on his life prior to his death in an airplane crash. The policy reserved to the insured the right to change the beneficiary. The proceeds of the policy are includible in his gross estate even though as a practical matter it was impossible for him, while the plane was in flight, to exercise those incidents of ownership retained by him in the policy.§20.2042-1. (Sec. 2042, '54 Code.)

Rev. Rul. 61-123, 1961-2 C.B. 151.

142.23 Group term policy. Three factual situations are set forth for determining the includibility in an employee's gross estate of life insurance proceeds from a group term policy maintained by an employer for the benefit of employees. Modified by Rev. Rul. 72-307. Rev. Rul. 68-334 superseded. Modified by Rev. Rul. 84-130. §20.2042-1. (Sec. 2042, '54 Code.)

Rev. Rul. 69-54, 1969-1 C.B. 221.

142.24 Group term policy; assignment of interest; California. Decedent was insured under two group life insurance policies and was issued individual certificates summarizing significant features of the master policies. One of the master policies specifically authorized an assignment of the insured's interest and a provision in the other purporting to prohibit assignment was deleted by endorsement. The certificates failed to conform to the master policies in that they purported to proscribe assignment of the insured's rights. Prior to decedent's death, he executed "absolute" assignments that were accepted by the insurance companies and the assignee. *Held,* the provisions in the master policies permitted assignments and prevailed over the individual certificates and such assignments were otherwise permissible under California law. Accordingly, the decedent effectively divested himself of all incidents of ownership in both group policies and the insurance proceeds were not includible in his gross estate. (Sec. 2042, '54 Code.)

Max J. Gorby, 53 T.C. 80, Acq., 1970-1 C.B. xvi.

142.25 Group term policy purchased by employer. The power to cancel an employer purchased group term life insurance policy solely by terminating employment is not an incident of ownership and the value of the proceeds of the policy is not includible in the insured's gross estate. Rev. Rul. 69-54 modified.§20.2042-1. (Sec. 2042, '54 Code.)

Rev. Rul. 72-307, 1972-1 C.B. 307.

142.26 Group term policy purchased by third party. A decedent possesses no incident of ownership, within the meaning of section 2042, in a life insurance policy purchased and owned by a third party under an employer's plan providing that optional insurance may be purchased by a qualified third party if the employee initially rejects such coverage and that the employee may later apply for insurance coverage if the third party ceases, for reasons other than death, to qualify as an eligible owner. §20.2042-1. (Sec. 2042, '54 Code.)

Rev. Rul. 76-421, 1976-2 C.B. 280.

142.27 Indirect payment of premiums; valuation. The increase in value of an insurance policy, such as one owned by a decedent who was not the insured, which is attributable to the payment of premiums, or any interest earned, during the year following date of death is deemed to be "excluded property" in determining the value of the policy.§81.11. (Sec. 811(j), '39 Code; Sec. 2032, '54 Code.)

Rev. Rul. 55-379, 1955-1 C.B. 449.

142.28 Intention of policy purchaser. Decedent purchased accidental death insurance policies on his life which named his business partners as beneficiaries. By oral agreement, the proceeds of the policies were to be used to purchase the interest of any deceased partner. *Held,* the proceeds were excludable from the decedent's gross estate. Although the insurance agent failed to have the policies issued reflect the oral instructions of the partners, it was intended by the partners that the policies would be owned by the beneficiaries with no interest or rights in the insured, and, therefore, decedent did not have any, "incidents of ownership" in the policies under the exception to the "policy facts" over "intent facts" principle. (Sec. 2042, '54 Code.)

Bert L. Fuchs, 47 T.C. 199, Acq., 1967-1 C.B. 2.

142.29 Joint and survivor annuities. Where a decedent purchased a single premium joint life and survivorship annuity contract from an insurance company subsequent to March 3, 1931, the value of the survivor's annuity or, if the survivor annuitant predeceased the decedent, the present worth of refund payments due under the contract is includible in the decedent's gross estate.§81.18. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 55-302, 1955-1 C.B. 446.

142.30 Life insurance trust. Proceeds of life insurance policies placed in trust by decedent, premiums on which were paid by the decedent prior to January 10, 1941, and by the trust thereafter, were held, on the facts, not includible in his gross estate as (a) a transfer in contemplation of death, (b) life insurance purchased with premiums paid by decedent, or (c) life insurance with respect to which the decedent possessed at his death any of the incidents of ownership, notwithstanding that decedent reserved some power to direct the trust investments. (Sec. 811, '39 Code; Sec. 2031, '54 Code.)

Edmund W. Mudge, 27 T.C. 188, Acq., 1957-2 C.B. 6.

142.31 Marital deduction; contingent and guaranteed interests. No marital deduction was allowable for any part of life insurance proceeds payable to the widow in 240 guaranteed monthly installments, since the portion of the proceeds covering the cost of funding the widow's life annuity after the 20-year period of guaranteed payments could be treated as a separate "property" for purposes of applying the terminable interest rule. No separate funds were kept or required to be kept with respect to the certain and contingent interests, and the insurer's separate actuarial bookkeeping entries with respect to such interests in no way created separate properties.§§81.47a, 20.2056(b)-1. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Meyer, 364 U.S. 410, Ct. D. 1860, 1961-1 C.B. 779.

142.32 Marital deduction; joint and mutual will. Jointly owned property, restricted by a joint and mutual will as to its ultimate distribution, and life insurance proceeds passing to the surviving wife qualify for the marital deduction. Upon her death, the total value of the remainder of the property held jointly with her husband and the proceeds of life insurance on his life are includible in her gross estate.§§20.2036-1, 20.2056(b)-1. (Secs. 2036, 2056; '54 Code.)

Rev. Rul. 71-51, 1971-1 C.B. 274.

142.33 Marital deduction; power in surviving spouse. The proceeds of an insurance policy on the decedent's life were left with the insurer, interest to be paid monthly to his widow, who could withdraw the proceeds only on an interest due date, in multiples of $500, and after 90 days' prior notice to the insurer. If the surviving spouse died within one year of decedent's death and before withdrawing the proceeds, the amount remaining in trust would be paid to decedent's administrators or executors. *Held*, the power of appointment held by the surviving spouse came into existence immediately upon her husband's death and was "exercisable in all events." The limitations imposed upon the power of appointment were merely formal rather than substantive. Accordingly, the insurance proceeds qualify for the marital deduction. (Sec. 2056, '54 Code.)

Charles R. Jennings, 39 T.C. 417, Acq., 1964–1 (Part 1) C.B. 4.

142.34 Marital deduction; surviving spouse's power of withdrawal. Decedent left proceeds of life insurance policies to his wife. The policy provided for payment of the face amount upon due proof of death of the insured. The beneficiary provisions provided for payment of interest on the proceeds monthly to the widow, the first interest payment becoming due 30 days after receipt of due proof of decedent's death. On interest due dates, the widow could elect to withdraw the full amount of the policy remaining. *Held*, the widow's withdrawal rights existed from the moment of the insured's death, were exercisable in all events and, therefore, qualified for the marital deduction. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

John J. Cornwell, 37 T.C. 688, Acq., 1964–1 (Part 1) C.B. 4.

142.35 Marital deduction; terminable interest. Where payment of insurance proceeds is to be made to decedent's surviving spouse only if living upon receipt by the insurer of due proof of the insured's death, otherwise to named secondary or contingent beneficiaries, the interest passing to the spouse does not come within the exception to the terminable interest rule provided for certain interests conditioned on survival for a limited period so as to qualify for the marital deduction.§81.47(b). (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 54–121, 1954–1 C.B. 196.

142.36 Marital deduction; terminable interest. Where insurance proceeds are to be paid to decedent's surviving spouse while living, with named secondary or contingent beneficiaries in the event she should die before having received the guaranteed monthly installments for 120 months, the marital deduction is disallowed by reason of the terminable interest rule even though the widow has a life expectancy of more than ten years. (Sec. 2056, '54 Code.)

Rev. Rul. 55–733, 1955–2 C.B. 388.

142.37 Marital deduction; terminable interest. The interests of two beneficiaries of a life insurance policy included in the insured's estate, the decedent's surviving spouse receiving monthly payments for life and another beneficiary receiving monthly payments until age 21 or death, whichever occurs first, are separate and distinct interests. The value of the proceeds passing to the surviving spouse is not a terminable interest and qualifies for the marital deduction.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 77–130, 1977–1 C.B. 289.

142.38 National Service Life Insurance proceeds; marital deduction. The proceeds of a National Service Life Insurance policy, payable to the widow of a decedent who had paid the initial premiums from his separate funds while a resident of a common law State and all subsequent premiums from community funds while a resident of a community property State, are not community property and their full value is includible in the decedent's gross estate. The value of such proceeds qualifies for the marital deduction under section 2056(a) of the Code, and no amount need be subtracted by reason of section 2056(c)(2)(B)(iii) in computing the limitation of the marital deduction. §20.2056(c)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 74–312, 1974–2 C.B. 320.

142.39 No-fault insurance death benefits. The value of no-fault insurance death benefits payable to the executor of a deceased driver or of a deceased passenger is includible in the decedent's gross estate under section 2042. §§20.2033–1, 20.2042–1. (Secs. 2033, 2042; '54 Code.)

Rev. Rul. 83–44, 1983–1 C.B. 228.

142.40 Partnership as beneficiary. At decedent's death in 1947, his partnership was the beneficiary of ten policies of insurance on his life which he had assigned to it prior to 1941. All premiums on the policies after the assignment were paid by the partnership. *Held*, the proceeds were not includible in his gross estate. (Sec. 811(g), '39 Code; Sec. 2042, '54 Code.)

Frank H. Knipp, 25 T.C. 153, Acq. in result, 1959–2 C.B. 5.

142.41 Placed in trust; premiums paid by trustee. The decedent transferred life insurance policies in trust, reserving the right to receive, for life, any excess income from the trust after payment of premiums on the policies. The trust income was never sufficient to pay premiums. The trustee paid portions of the premiums and the decedent made up the deficiency. *Held*, the decedent at the time of death did not possess any incidents of ownership, the payments of the premiums by the trustee were not indirect payments by the decedent. Therefore, proceeds of the insurance policies were not includible in the decedent's gross estate to the extent applicable to premiums paid by trustee. (Sec. 811(g), '39 Code; Sec. 2042, '54 Code.)

Newcomb Carlton, 34 T.C. 988, Nonacq., 1963–1 C.B. 5.

142.42 Placed in trust; premiums paid with trust proceeds. A decedent, who died in 1949, had placed life insurance policies in an irrevocable trust in 1935 for the benefit of his family. Decedent paid part of the premiums on the policies until 1941, after which all of the premiums were paid by the trustee from dividends and proceeds from loans on the policies. The decedent reserved power to instruct the trustee in the management of any additional insurance policies placed in the trust. *Held*, proceeds of the policies were not includible in decedent's gross estate as life insurance purchased with premiums paid by decedent. (Sec. 811(g), '39 Code; Sec. 2042, '54 Code.)

Edmund W. Mudge, 27 T.C. 188, Nonacq., 1964–1 (Part 1) C.B. 6.

142.43 Placed in trust; retained power as settlor. The decedent transferred various securities and life insurance policies on his life to a newly created trust naming himself and two others as co-trustees who were instructed to pay the premiums out of trust income and distribute the remainder to beneficiaries. The decedent expressly reserved the power as settlor to substitute securities and other insurance policies of "equal value" for those held by the trust. *Held*, none of the trust assets were includible in the decedent's estate. The decedent's retained power to substitute is not a power to alter, amend, or revoke; the power and right of the decedent with respect to the insurance policies held in trust did not constitute incidents of ownership. (Secs. 2038, 2042; '54 Code.)

Anders Jordahl, 65 T.C. 92, Acq., 1977–1 C.B. 1.

142.44 Premiums paid in contemplation of death. The amount includible in the gross estate of a decedent who paid all premiums on an insurance policy on her life purchased more than three years before her death by her children, who were the owners and beneficiaries, is the portion of the premiums paid in contemplation of death. The portion of the proceeds attributable to such premiums is not includible. (Secs. 2035, 2042; '54 Code.)

Inez G. Coleman, 52 T.C. 921, Acq., 1978–1 C.B. 1.

142.45 Proceeds; assignment of policies. Decedent executed an irrevocable assignment of all his right, title and interest in four life insurance policies to a bank as trustee and named the bank as beneficiary. The policies contained a provision that no assignment would be binding on the insurer unless filed with it and no such filing was made. *Held*, the failure to file copies of the trust agreement with the insurers neither negated decedent's intent to make an assignment, which was clearly shown, nor rendered the assignment invalid under Illinois law which controlled. Thus, decedent retained no incidents of ownership in the policies and the proceeds are not includible in his gross estate. (Sec. 2042, '54 Code.)

Sidney F. Bartlett, 54 T.C. 1590, Acq., 1971–1 C.B. 1.

142.46 Proceeds; excludable from gross estate. In 1934, the decedent executed an instrument in which he purported to transfer 25 different life insurance policies to an irrevocable inter vivos trust and thereby divest himself of all right, title, and interest in the policies. The trustees were to enter into agreements with the issuing companies with respect to the distribution of the policy proceeds and all matters relating to the rights of any person under the policies. The designation of beneficiaries was limited to a small group of members of decedent's family. Decedent died in 1961. *Held*, the 1934 instrument created a bona fide and effective trust which acquired title, by assignment from decedent, to all 25 of the insurance policies. Decedent retained no incidents of ownership in any of the policies at his death and the insurance proceeds are not includible in the decedent's gross estate. (Secs. 2036, 2038, 2042; '54 Code.)

Powell Crosley, Jr., 47 T.C. 310, Acq., 1967–2 C.B. 2.

142.47 Proceeds; group term policy purchased by employer. Decedent's life was insured under a group term life insurance policy paid for entirely by his employer who designated the beneficiaries. Decedent's only substantive right under the policy was to select an optional mode of settlement which would spread payments to one of the beneficiaries, his spouse, over a longer period of time. *Held*, decedent did not possess any of the incidents of ownership of the policy and, therefore, the insurance proceeds are not includible in the decedent's gross estate. (Sec. 2042, '54 Code.)

James H. Lumpkin, Jr., 56 T.C. 815, Nonacq., 1973–2 C.B. 2.

142.48 Proceeds; group term policy purchased by employer; retained conversion right. If a decedent transferred all the incidents of ownership in a noncontributory group term life insurance policy on the decedent's life, but retained the right to convert the policy to an individual policy should the decedent cease employment, the proceeds of the policy are not includible in the decedent's gross estate. Rev. Rul. 69–54 modified. §§20.2042–1 (Sec. 2042, '54 Code.)

Rev. Rul. 84–130, 1984–35 I.R.B. 5; James Smead, 78 T.C. 43, Acq., 1984–35 I.R.B. 4.

142.49 Proceeds; includible in gross estate. The decision in *Kohl and Harley* which held that to apply the provisions of section 811(g) of the 1939 Code, as amended by section 404 of the Revenue Act of 1942, to the proceeds of the insurance policies involved in that case would result in a direct tax without the apportionment required by Article 1, Section 2, and Article 1, Section 9, of the Constitution of the United States, and would result in retroactive taxation in violation of the Fifth Amendment to the Constitution, will not be followed by the Service as a precedent in the disposition of other cases involving a similar factual situation.§81.27. (Sec. 811(g), '39 Code; Sec. 2042, '54 Code.)

Rev. Rul. 56–250, 1956–1 C.B. 659.

142.50 Proceeds; includible in gross estate. The decedent divested himself of rights in four life insurance policies by assigning them to his wife who was the named beneficiary. However, the decedent continued to pay the premiums until his death in 1954. The taxpayer (executor) charged that section 811(g)(2)(A) of the 1939 Code was unconstitutional as it was retroactive and resulted in a direct tax on property. *Held,* the proceeds are properly includible in the gross estate, since the taxable event is laid on the "ripening" at death of rights paid for by the decedent and is not a direct tax on property, or retroactive in its impact.§81.27. (Sec. 811(g), '39 Code; Sec. 2042, '54 Code.)

Manufacturers National Bank of Detroit, 363 U.S. 194, Ct. D. 1852, 1960–2 C.B. 474.

142.51 Proceeds; paid to children under divorce decree. Life insurance proceeds paid to a decedent's minor children under a policy maintained pursuant to a divorce decree and property settlement agreement, which also provided for the spouse's surrender of support rights for a lump sum payment of equal value and child support payments consistent with the decedent's legal obligation, in a state in which such obligation ceases upon the parent's death, are not deductible from the decedent's gross estate. §20.2053–1. (Sec. 2053, '54 Code.)

Rev. Rul. 78–379, 1978–2 C.B. 238.

142.52 Proceeds; paid to divorced wife. Life insurance proceeds paid by the insurance company directly to a decedent's divorced wife are includible in and deductible from the estate of a decedent who, under the divorce decree, was required to name his wife as beneficiary of life insurance policies and was obligated to maintain the policies until her death or remarriage. Rev. Rul. 71–482 superseded. §20.2053–4. (Sec. 2053, '54 Code.)

Rev. Rul. 76–113, 1976–1 C.B. 276; William E. Robinson, 63 T.C. 717, Acq., 1976–2 C.B. 2.

142.53 Proceeds; paid to trust. The proceeds of a life insurance policy were payable to a decedent's estate to the extent of the policy's cash surrender value, less any outstanding indebtedness, and the balance was payable to the trustee of an irrevocable funded insurance trust, which was created by the decedent and which owned the policy and paid that portion of the annual premium that exceeded the annual increase in the cash surrender value. All contract rights under the policy were exercisable by the trustee except for decedent's right, never exercised, to borrow against the cash surrender value. The proceeds payable to the estate are includible in the gross estate under section 2042(1); the balance is includible under section 2042(2). §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 79–129, 1979–1 C.B. 306.

142.54 Proceeds; paid to trust; policy owner to receive trust income for life. An individual purchased and owned a life insurance policy on another's life and designated the trustee of a revocable trust created by the insured as beneficiary. When the insured dies and the policy proceeds become payable to the trustee, the individual, who will receive the income of the trust for life, will have made a completed gift. Further, if the individual does not relinquish the life interest in the trust, the portion of the trust corpus attributable to the individual's contribution of the policy proceeds will be includible in the individual's gross estate at death. §§20.2036–1, 25.2501–1, 25.2511–1, 25.2511–2, 25.2512–9. (Secs. 2036, 2501, 2511, 2512; '54 Code.)

Rev. Rul. 81–166, 1981–1 C.B. 477.

142.55 Proceeds; partnership group term life insurance policy; excludable from gross estate. Proceeds of a partnership group term life insurance policy are not includible in partner-decedent's estate under section 2042(2) where the partner assigned all right, title, and interest in the policy to a trust more than three years before death. §20.2042–1 (Sec. 2042, '54 Code.)

Rev. Rul. 83–148, 1983–2 C.B. 157.

142.56 Proceeds; policy owned by partnership; includible in gross estate. Proceeds of a life insurance policy owned by a partnership, but payable other than to or for the benefit of the partnership, are includible in the deceased insured partner's gross estate. §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 83–147, 1983–2 C.B. 158.

142.57 Proceeds; policy purchased by employer. A decedent's employer, the sole beneficiary of the decedent's life insurance policy, paid one-half of the insurance proceeds to the decedent's designated beneficiary. The employer had paid all premiums and held all incidents of ownership. *Held,* no part of the proceeds are includible in the gross estate of the decedent. (Sec. 2042, '54 Code.)

John C. Morrow, 19 T.C. 1068, Acq. withdrawn and Nonacq. substituted, 1979–2 C.B. 2.

142.58 Proceeds; power of insured to direct payment. Decedent died possessed of three insurance policies taken out prior to the Revenue Act of 1918 under which his wife was named irrevocable beneficiary. Decedent possessed the power during his lifetime, without the consent of the beneficiary, to elect that the proceeds be paid in installments or be left on deposit with the insurer until the wife's death. If the latter option were elected the proceeds would be paid to the wife's estate and ultimately to the beneficiaries of her estate. *Held,* decedent's right to say when the proceeds should be paid to the beneficiary did not amount to control of the proceeds and the proceeds were not includible in decedent's gross estate. (Sec. 302(g), Revenue Act of 1926; Sec. 2042, '54 Code.)

May Billings, 35 B.T.A. 1147, Acq. withdrawn and Nonacq. substituted, 1972–1 C.B. 3.

142.59 Proceeds; power of insured to exercise incidents of ownership. A decedent who more than three years prior to his death had assigned all interest in nine life insurance policies on his life to his wife and after her death, as trustee of a testamentary trust for the benefit of their child that included the policies, had broad powers in respect of the corpus but could not exercise such powers for his own benefit, possessed no incidents of ownership in the policies at the time of his death, and the proceeds are not includible in his gross estate. (Sec. 2042, '54 Code.)

Hector R. Skifter, 56 T.C. 1190, Nonacq., 1978–1 C.B. 3.

142.60 Proceeds; power of insured to exercise incidents of ownership. The Service will not follow the *Connelly* decision that held the decedent's right under an employer-funded noncontributory group life insurance policy to select optional settlement modes in conjunction with the employer and insurer was not an incident of ownership within the meaning of section 2042. §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 81–128, 1981–1 C.B. 469.

142.61 Proceeds; power of insured to exercise incidents of ownership. A decedent, to whom powers over an insurance policy were transferred in trust, did not have incidents of ownership in the policy if the decedent's powers could not be exercised for the decedent's benefit, and the decedent did not transfer the policy or any consideration for purchasing or maintaining the policy to the trust. Rev. Rul. 76–261 revoked. §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 84–179, 1984–53 I.R.B. 7.

142.62 Proceeds; power of insured to exercise incidents of ownership; credits against tax. The credit for tax on prior transfers will not apply to a life insurance policy on the decedent's life that was included in the predeceased spouse's residuary estate and bequeathed to the decedent spouse as trustee of the residuary trust, for the benefit of their children, with powers sufficiently broad so as to be termed "incidents of ownership" within the meaning of section 2042.§20.2013–5. (Sec. 2013, '54 Code.)

Rev. Rul. 77–156, 1977–1 C.B. 269.

142.63 Proceeds; power of insured to prevent assignment. A decedent, who had assigned all of his right, title, and interest in an insurance policy on his life to his wife as owner and beneficiary but retained the power to prevent the change of beneficiary to, or assignment of, the policy tc anyone not having an insurable interest in his life, possessed incidents of ownership and the policy proceeds are includible in his gross estate. §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 75–70, 1975–1 C.B. 301.

142.64 Proceeds; reversionary interest; incidents of ownership. A decedent's spouse, who was the primary beneficiary of an insurance policy on the life of the decedent who had assigned to the spouse all rights in the policy, changed the policy's beneficiary provisions so that, if the spouse had died before the decedent, the proceeds would be payable to whomever the decedent designated by will. The decedent held no incident of ownership in the policy at death, and no portion of the proceeds is includible in the decedent's gross estate. §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 79–117, 1979–1 C.B. 305.

142.65 Proceeds; right to prevent cancellation. A decedent's right, existing at the time of death, to prevent cancellation of an insurance policy on the decedent's life that is owned by the decedent's employer by purchasing the policy for its cash surrender value if the employer decides to terminate it is an incident of ownership within the meaning of section 2042. The insurance proceeds reduced by the cash surrender value at the time of death are includible in the decedent's gross estate. §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 79–46, 1979–1 C.B. 303.

142.66 Proceeds; rights under employment agreement. Under an employment agreement, if the employer, the owner and beneficiary of two life insurance policies on a decedent's life, elected not to pay the premiums or to surrender and terminate the policies the decedent had a right to take an assignment of the policies in exchange for their cash value. *Held,* decedent's rights at death are not incidents of ownership under section 2042 and the proceeds of the policies are not includable in the gross estate. (Sec. 2042, '54 Code.)

John Smith, 73 T.C. 307, Acq. in result, 1981–1 C.B. 2.

142.67 Proceeds paid to "personal beneficiary"; "split-dollar" arrangements. Factual situations illustrate whether a decedent, or the corporation controlled by the decedent, possessed sufficient incidents of ownership in an insurance policy on the decedent's life, for which premium costs were shared under a split-dollar arrangement, to require inclusion in the gross estate of proceeds paid to the decedent's personal beneficiary. Modified by Rev. Rul. 82–145. §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 76–274, 1976–2 C.B. 278.

142.68 Proceeds paid to "personal beneficiary"; "split-dollar" arrangements. A decedent's controlled corporation held at the decedent's death the right to borrow against the cash surrender value of a life insurance policy on the decedent's life. The portion of the policy proceeds payable other than to or for the benefit of the corporation is includible in the gross estate under section 2042(2). Rev. Rul. 76–274 modified. §§20.2031–2, 20.2042–1, 301.7805–1. (Secs. 2031, 2042, 7805; '54 Code.)

Rev. Rul. 82–145, 1982–2 C.B. 213.

142.69 Proceeds transferred to trust. The value of trust corpus established with proceeds of insurance on the life of decedent's predeceased husband is not includible in her estate where the insurer consents to a court authorized lump-sum distribution in lieu of monthly payments.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 70–84, 1970–1 C.B. 188.

142.70 Qualified employees' plan. Amounts receivable by beneficiaries under a qualified noncontributory profit-sharing plan which represent the proceeds of insurance policies on the life of a decedent, otherwise includible under section 2042, are excludable from the decedent's gross estate by reason of section 2039(c) of the Code. Amplified by Rev. Rul. 82–199. §§20.2039–2, 20.2042–1. (Secs. 2039, 2042; '54 Code.)

Rev. Rul. 67–371, 1967–2 C.B. 329.

142.71 Qualified employees' plan. Lump sum pre-retirement benefits payable under a qualified employees' plan and consisting of the proceeds of an ordinary life insurance policy are includible in the decedent's gross estate if the beneficiary elects 10-year income averaging with respect to the taxable portion of the proceeds. Where the benefits consist of the proceeds of group term insurance, the entire amount is excludible. Rev. Rul. 67–371 amplified. §§20.2039–2, 20.2042–1. (Secs. 2039, 2042; '54 Code.)

Rev. Rul. 82–199, 1982–2 C.B. 211.

142.72 Qualified employees' plan. Only the portion of life insurance proceeds received by a beneficiary under a qualified employees' plan that is attributable to contributions by the employer falls within the exclusion provisions of section 2039(c). The portion that is attributable to the decedent's contributions is includible in his gross estate under section 2042 of the Code.§20.2039–2. (Sec. 2039, '54 Code.)

Rev. Rul. 70–211, 1970–1 C.B. 190.

142.73 Simultaneous deaths; proceeds; valuation. The value of insurance to be included in the estates of two individuals, each of whom owned an insurance policy on the life of the other and both of whom died in circumstances in which each was considered to have been the survivor under the state's Uniform Simultaneous Death Act, is the interpolated terminal reserve at the date of the insured decedent's death plus the proportionate part of the gross premium last paid before the date of the insured's death that covers the period extending beyond that date.§§20.2031–8, 20.2033–1. (Secs. 2031, 2033; '54 Code.)

Rev. Rul. 77–181, 1977–1 C.B. 272.

142.74 Simultaneous deaths of spouses. Taxpayer and his wife, both residents of Oregon, were killed simultaneously in an airplane crash on February 25, 1964. Both died testate. At the time of death, taxpayer's wife owned a $100,000 insurance policy on his life. *Held,* no part of the insurance proceeds were includible in the husband's estate as he inherited none of the incidents of ownership in the policy from his wife; however, the full amount of the proceeds is includible in the wife's estate. (Secs. 2033, 2042; '54 Code.)

Roger M. Chown, 51 T.C. 140, Acq., 1969–1 C.B. 21.

142.75 Simultaneous deaths of spouses; proceeds. An individual who owned an insurance policy on his spouse's life naming the trustee of a living trust as beneficiary, and who pursuant to local law was presumed to have survived his spouse when they died simultaneously, is deemed to have made a gift of the insurance proceeds to the trustee subject to the provisions of section 2501 and such proceeds are also includible in his gross estate under section 2036.§§20.2036–1, 25.2511–1. (Secs. 2036, 2511: '54 Code.)

Rev. Rul. 77–48, 1977–1 C.B. 292.

142.76 Special Agent's Insurance Fund. Death benefits payable by the Special Agent's Insurance Fund of an association whose membership consists of civil employees of an agency of the United States government organized for the purpose of paying a lump sum to the estate, or the beneficiary, of a deceased member, and deriving its revenue from membership contributions, assessments, and invested funds are includible in the gross estate of the deceased member.§20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 65–222, 1965–2 C.B. 374.

142.77 Survivor's loss benefits; no-fault automobile insurance. Survivor's loss benefits payable under a no-fault automobile insurance policy are not property in which the decedent had an interest at death and are not includible in the gross estate. §§20.2033–1, 20.2042–1. (Secs. 2033, 2042; '54 Code.)

Rev. Rul. 82–5, 1982–1 C.B. 131.

142.78 Transfer in contemplation of death. Proceeds of life insurance policies transferred by decedent more than three years before death are not includible in gross estate. However, the value of any premiums paid by the decedent on the policies within three years of his death is includible. Further, proceeds from a one-year accidental death policy transferred nine months before accidental death are includible in gross estate. Rev. Rul. 67–463 revoked.§20.2035–1. (Sec. 2035, '54 Code.)

Rev. Rul. 71–497, 1971–2 C.B. 329.

142.79 Transfer in contemplation of death; premiums paid by beneficiary. Only that portion of the proceeds of an insurance policy on the life of a decedent, who had transferred the policy, within three years prior to death, to the beneficiary of the policy who thereafter paid the premiums, that bears the same ratio to the entire proceeds as the premiums paid by the decedent bears to the total premiums paid for the policy is includible in the decedent's gross estate. (Secs. 2035, 2042; '54 Code.)

Morris R. Silverman, 61 T.C. 338, Acq., 1978–1 C.B. 2.

142.80 Transfer within 3 years of death. An employee who was insured under a group term life insurance policy, the premiums for which were paid by the employer, assigned all rights under the policy to the insured's spouse in 1971 under an agreement assigning the spouse the rights under any arrangement of the employer for life insurance coverage. The employer terminated its insurance arrangement and obtained a similar arrangement with a different insurer in 1977, less than three years before the insured's death, and the insured assigned the new policy to the spouse. The value of the policy proceeds is not includible in the insured's gross estate. Rev. Rul. 79–231 revoked. (Sec. 2035, '54 Code.)

Rev. Rul. 80–289, 1980–2 C.B. 270.

142.81 Transfer within 3 years of death. The value of a renewable group term life insurance policy is not includible in a decedent's gross estate under section 2035 when the decedent assigned the policy more than three years before death, but is considered to have made premium payments until death. (Sec. 2035, '54 Code.)

Rev. Rul. 82–13, 1982–1 C.B. 132.

142.82 Transfer within 3 years of death; insured predeceased decedent. The proceeds of an insurance policy on the life of another are includible in a decedent's gross estate if the decedent assigns that policy within three years of death and the insured predeceases the decedent. (Sec. 2035, '54 Code.)

Rev. Rul. 81–14, 1981–1 C.B. 456.

142.83 Transfers within 3 years of death; controlled corporation. The value of life insurance proceeds is includible in the decedent's gross estate when a decedent's controlled corporation transfers, within 3 years of death, all incidents of ownership in a policy on the decedent's life. §20.2042–1. (Secs. 2035, 2042; '54 Code.)

Rev. Rul. 82–141, 1982–2 C.B. 209.

142.84 Unexercised power of appointment; date of creation. Decedent, at her death in 1956, possessed unexercised general powers of appointment over insurance proceeds provided for in settlement agreements executed in 1938 with respect to certain life insurance policies under which her son was the insured. The son retained the right to revoke or change the beneficiaries and methods of payment, but died in 1945 without exercising this right. *Held,* the powers of appointment were created the date the settlement agreements were executed, i.e. before October 21, 1942, rather than the date of the son's death, and the insurance proceeds were not includible in decedent's gross estate. (Sec. 2041, '54 Code.)

Ernestina Rosenthal, 34 T.C. 144, Acq., 1963–1 C.B. 4.

142.85 Valuation; policy on the life of another. A single premium life insurance policy owned by a decedent for many years on the life of another person may not be valued, under section 20.2031–8(a) of the regulations, by comparing the cost, at the time of decedent's death, of a similar policy of the same face amount with a lesser cash surrender value.§20.2031–8. (Sec. 2031, '54 Code.)

Rev. Rul. 78–137, 1978–1 C.B. 280.

142.86 Valuation; policy on the life of another; split-dollar. A decedent made an agreement with the employer of the decedent's spouse to purchase a life insurance policy under a split-dollar arrangement on the employee-spouse's life, giving the decedent ownership of the policy. The employer agreed to pay that portion of the annual premium that was equal to the increase in the cash surrender value during the year and was entitled to receive from the proceeds an amount equal to the cash surrender value. The policy had been in force for some time and further premium payments were to be made after the decedent's death. The value of the policy that is includible in the gross estate is the difference between the interpolated terminal reserve and the cash surrender value. §§20.2031–8, 20.2033–1. (Secs. 2031, 2033; '54 Code.)

Rev. Rul. 79–429, 1979–2 C.B. 321

142.87 Veteran's insurance proceeds. The proceeds of life insurance policies issued under the World War Veterans' Act of 1924, the National Service Life Insurance Act of 1940, and the Servicemen's Indemnity Act of 1951 are not subject to the community property laws of any state. Accordingly, the full value of the proceeds of such insurance is includible in the deceased veteran's estate. (Sec. 2042, '54 Code.)

Rev. Rul. 55–622, 1955–2 C.B. 385; Rev. Rul. 56–603, 1956–2 C.B. 601.

142.88 Veteran's insurance proceeds; marital deduction. Proceeds of life insurance policies issued under the World War Veterans' Act of 1924 or the National Service Life Insurance Act of 1940 qualify for the estate tax marital deduction provided that at the death of the insured such proceeds are payable to the surviving spouse either in a lump sum or in monthly installments with any balance at his later death payable to her estate. Proceeds payable under the Serviceman's Indemnity Act of 1951 will not qualify for the estate tax marital deduction. (Sec. 2056, '54 Code.)

Rev. Rul. 57–423, 1957–2 C.B. 623.

Limitation period
(See: ADMINISTRATIVE)

Losses

144.1 Tax on insurance proceeds unrecoverable from beneficiary. No deduction is allowable under section 2054 to an estate by reason of the executor's inability to recover from the insurance beneficiary an amount equal to his pro rata share of the estate tax liability. However, a legatee whose share of the estate bears the burden of such tax is entitled to a bad debt deduction under section 166(d)(1) of the Code.§20.2054–1. (Secs. 166, 2054; '54 Code.)

Rev. Rul. 69–411, 1969–2 C.B. 177.

Marital deduction

146.1 Adjusted gross estate; abatement of bequests; Tennessee. The estate's assets being inadequate to satisfy all legacies, the Court had to classify the legacies as general or specific under Tennessee law to identify those that abate and to determine the proper marital deduction. A bequest of "all of my" tangible personal property to decedent's wife was specific; a bequest to other relatives of 75 shares of corporate stock, not specifically identified, was general. Also, a mortgage against real property conveyed by specific bequest was chargeable only against such real property.

Jack E. Short, 68 T.C. 184, Acq., 1977–2 C.B. 2.

146.2 Adjusted gross estate; administration expenses. Where an executor elects to deduct administration expenses from the gross income of the estate under section 23(a) of the Code, rather than from the gross estate under section 812(b), the 50 percent limitation for the marital deduction is determined by subtracting the aggregate amount of the deductions actually claimed and allowed under section 812(b) from the entire gross estate.§81.47(d). (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 55–225, 1955–1 C.B. 460.

146.3 Adjusted gross estate; administration expenses. Where one-half the value of the decedent's adjusted gross estate is bequeathed to the surviving spouse, and an election is made to deduct expenses of administration from the gross income of the estate rather than from the decedent's gross estate, the value of the adjusted gross estate is determined by subtracting from the gross estate only the deductions for estate tax purposes, and the value of the interest which actually passed to the surviving spouse should not be reduced by items which are allowed as deductions under section 2053 of the Code. (Sec. 2056, '54 Code.)

Rev. Rul. 55–643, 1955–2 C.B. 386.

146.4 Adjusted gross estate; valuation. The decedent bequeathed to a trust for the benefit of his wife one-half of the excess of his gross estate over the deductions allowable, to be further reduced by the portions of his gross estate which passed to his wife but did not constitute part of his estate at the time of his death. The widow received life estates in certain annuity and insurance contracts, but died of incurable cancer one year and three months later. *Held,* the life interest reduced the estate by the value of such interest computed on the basis of the widow's actual life expectancy, but the use of the terminable interests in computing the amount of the trust did not invalidate such trust for the marital deduction. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.

John P. Hoelzel, 28 T.C. 384, Acq., 1957–2 C.B. 5.

146.5 Adjusted gross income; abatement of bequests. Decedent, a resident of Indiana, bequeathed property to his wife in an amount equal to 50 percent of his adjusted gross estate, and also made bequests to certain beneficiaries. The will directed that estate taxes be paid from other than the wife's property so that her bequest would not be reduced by such payment and his estate would get the full benefit of the marital deduction. The estate's assets were inadequate to pay administration expenses and taxes and to distribute property according to decedent's will. The Commissioner determined that the marital bequest should abate in order to pay the expenses and therefore reduced the marital deduction. *Held,* under Indiana law, the decedent's intention to give 50 percent of his adjusted gross estate to his wife prevails and the other bequests abate first for the payment of estate taxes. (Sec. 2056, '54 Code.)

Rudolph G. Leeds, 54 T.C. 781, Acq., 1971–1 C.B. 2.

146.6 Allowance in lieu of homestead and exempt property; Arizona. The allowances in lieu of homestead and exempt property granted under Arizona law to the decedent's spouse who survives the decedent by more than 120 hours are not terminable interests and qualify for the marital deduction. §20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 76–166, 1976–1 C.B. 287.

146.7 Annuity; alternate valuation date; contingent interest. A surviving spouse's interest in property will not qualify for the marital deduction where another party has an interest in the property on the decedent's date of death but that interest is extinguished prior to the alternate valuation date as elected by the executor of the decedent's estate. §§20.2032–1, 20.2056(b)–1. (Secs. 2032, 2039, 2056; '54 Code.)

Rev. Rul. 85–100, 1985–29 I.R.B. 10.

146.8 Annuity; Civil service. The value of the survivor's annuity under the Civil Service Retirement system is not allowable as a marital deduction, to the extent included in the decedent's gross estate, if upon the date of the decedent's death any portion of his contributions plus interest accrued thereon is payable to anyone other than the surviving spouse or her estate in the event of her death or remarriage. On the other hand, the marital deduction would be allowable if the decedent designates his widow or her estate as the beneficiary of any unrecovered contributions. Moreover, if the decedent's contributions had been recovered by the date of death, the value of the survivor's annuity, to the extent included in the decedent's gross estate, would be allowable as a marital deduction.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 64–310, 1964–2 C.B. 342.

146.9 Annuity; employee. Decedent entered into a pension agreement with his employer which provided that in the event of decedent's death prior to retirement, proceeds of insurance and annuity contracts funding the agreement would be paid to his wife until death or remarriage, at which time, remaining payments would be made to the employer, except any unrecovered portion of decedent's contributions, which upon the wife's death without remarriage were payable to her estate, but upon her remarriage were payable to decedent's estate. *Held,* the value of the wife's annuity interest, less the amount of the decedent's contributions, although a terminable interest, qualifies for the marital deduction because no interest in that property passed from the decedent to any other person for less than full and adequate consideration. (Sec. 2056, '54 Code.)

Wilmar Mason Allen, 39 T.C. 817, Acq., 1964–1 (Part 1) C.B. 4.

146.10 Annuity; terminable interest. A survivor's annuity payable to a decedent's spouse by the decedent's wholly owned corporation, the stock in which was bequeathed in equal shares to the surviving children is not a "terminable interest" and qualifies for the marital deduction.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 77–404, 1977–2 C.B. 333.

146.11 Annuity; terminable interest in annuity. No marital deduction is allowable for the value of annuity payments to the surviving spouse of a deceased employee, who is also survived by a dependent child, from a city's nonqualified pension plan that provides that upon the death or prior remarriage of the spouse the annuity payments will be apportioned equally among the dependent children. However, the deduction is allowable if there are no dependent children at the time of the decedent's death. §20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 76–404, 1976–2 C.B. 294.

146.12 Award in lieu of homestead; family allowance; Washington State. An "award in lieu of homestead" granted under the law of Washington is not a nondeductible terminable interest and qualifies for the marital deduction; a "family allowance" under Washington law is a nondeductible terminable interest and does not qualify for the deduction.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 72–153, 1972–1 C.B. 309.

146.13 Bequests; cash in lieu of life income interest. A cash bequest in lieu of a life income interest, payable unconditionally at the election of a surviving spouse within a reasonable time after the decedent's death qualifies for the marital deduction. §20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 82–184, 1982–2 C.B. 215.

146.14 Bequests; power to appoint portion of property. The power given by decedent to his widow to appoint a portion of the property passing from the decedent in trust for the benefit of the widow does not in itself create a separate trust in respect of the portion of the trust corpus over which the widow has a power of appointment so as to qualify the value of the entire trust passing from the decedent, or any portion thereof, for the marital deduction.§81.47(a). (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 54–20, 1954–1 C.B. 195.

146.15 Bequests; property exempted under local law. Property exempted from execution under local laws, which is set off absolutely to a widow from her deceased husband's estate, constitutes an interest in property acquired by inheritance and the value of such property qualifies for the marital deduction.§81.47a. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 55–419, 1955–1 C.B. 458.

146.16 Charitable transfers with retained interest. The value of inter vivos transfers to a charitable corporation is includible in the estate of the donor who, as president of the corporation, retained power over the disposition of its funds. The value is also includible in the value of the decedent's adjusted gross estate in determining the maximum marital deduction allowable and qualifies as a charitable deduction.§§20.2036–1, 20.2055–1, 20.2056(c)–1. (Secs. 2036, 2055, 2056; '54 Code.)

Rev. Rul. 72–552, 1972–2 C.B. 525.

146.17 Community and separate property. The adjusted gross estate, in cases involving community property, is determined by subtracting from the value of the entire gross estate the sum of all community property and an amount that bears the same ratio to the aggregate of the deductions allowed under sections 2053 and 2054, irrespective of specific characterization, that the value of all the noncommunity property bears to the entire gross estate. §20.2056(c)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 76–349, 1976–2 C.B. 297.

146.18 Community property; Civil Service Retirement Act payments. State community property laws do not apply to annuities, death benefits or refunds payable under the Civil Service Retirement Act. The full value of retirement contributions, plus the accrued interest thereon, is includible in the gross estate of a Federal Civil Service employee. Distinguished by Rev. Rul. 6[illegible]–168. (Sec. 2039, '54 Code.)

Rev. Rul. 57–446, 1957–2 C.B. 619.

146.19 Community property; converted to separate property. A decedent's separate property converted from community property when he was divorced from his surviving spouse whom he later remarried is treated as community property in computing the adjusted gross estate under section 2056(c)(2)(B) of the Code for purposes of determining the allowable marital deduction.§20.2056(c)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 73–309, 1973–2 C.B. 319.

146.20 Community property; converted to separate property; income. Income from community property which had been converted to separate property after December 31, 1941, as well as property acquired or derived from such income constitutes separate property for the purpose of computing the adjusted gross estate when so designated by the applicable local property law.§20.2056(c)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 67–171, 1967–1 C.B. 274.

146.21 Community property; converted to separate property; income. Income derived from a decedent's separate property that was converted from community property by a decedent and the decedent's spouse upon moving to a common law state constitutes separate property for the purpose of computing the adjusted gross estate under section 2056. §20.2056(c)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 78–391, 1978–2 C.B. 245.

146.22 Community property; Louisiana. Treatment of policies and the proceeds therefrom under the community property laws of Louisiana where the insured at death possessed incidents of ownership in the policies which had been taken out by him is set forth. The premium payments were made entirely with separate funds of either spouse, with separate funds of both spouses, combined, entirely with community funds, or in part with the separate funds of the insured and in part with community funds. The beneficiary is (1) anyone other than the insured's estate or surviving spouse, (2) the surviving spouse, or (3) the insured's estate.§§81.26, 81.27, 81.36, 81.47(a), 86.2. (Secs. 811(g), 812(b), 812(e), 1000, '39 Code; Secs. 2042, 2051, 2056, 2511, '54 Code.)

Rev. Rul. 232, 1953–2 C.B. 268.

146.23 Community property; relinquishment of interest. Where a wife, pursuant to an election provided in her deceased husband's will, relinquishes her one-half interest in community property in order to take under the will and allow its terms to govern the disposition of her community interest, a marital deduction is allowable to decedent's estate only to the extent that the property bequeathed to the wife exceeds in value property she is required to relinquish. No deduction is allowable to the estate for community debts and administration expenses properly chargeable to the wife's community interest, even though as a result of testamentary direction the executors are required to pay all community debts and administration expenses.§§81.47c, 20.2053–1, 20.2056(b)–4. (Sec. 812, '39 Code; Secs. 2053, 2056, '54 Code.)

Stapf, 375 U.S. 118, Ct. D. 1885, 1964–1 (Part 1) C.B. 533.

146.24 Conflict in will provisions. Under Texas law, the bequest of a remainder interest in property to the decedent's children in a later clause of the will prevails over the bequest of the same property to the surviving spouse "in fee simple and absolute" and the surviving spouse does not have an absolute interest in the property that qualifies for a marital deduction.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 77–98, 1977–1 C.B. 288.

146.25 Credits against tax; prior transfers. In computing the credit for tax on prior transfers under the "second limitation" of section 2013(c)(1) of the Code; the marital deduction and charitable deduction to be used in computing the tax described in subparagraph (A) of such section are the same as the respective amounts allowed as deductions in the final determination of the decedent's taxable estate.§20.2013–1. (Sec. 2013, '54 Code.)

Rev. Rul. 61–208, 1961–2 C.B. 148.

146.26 Credits against tax; prior transfers. In determining the credit for tax on prior transfers under the "second limitation" of section 2013(c)(1), for purposes of computing the tax on the reduced adjusted gross estate of a decedent who died after 1976, the applicable marital deduction is the value of the property actually passing to the surviving spouse, but not to exceed the greater of $250,000 or one-half of the reduced adjusted gross estate. Rev. Rul. 60–161 amplified. §§20.2013–3, 20.2056(c)–1. (Secs. 2013, 2056; '54 Code.)

Rev. Rul. 80–210, 1980–2 C.B. 251.

146.27 Default of exercise of power. The marital deduction allowable with respect to life estates coupled with a general power of appointment is not lost merely because the donor-spouse also provides for takers in default of exercise of the power and for the payment of the entire corpus to his spouse under certain conditions.§81.47a. (Sec. 812(e), '39 Code; Sec. 2051, '54 Code.)

Rev. Rul. 55–394, 1955–1 C.B. 458.

146.28 Determination of property interest; effect of State trial court decree. Where estate tax liability turns upon the character of a property interest held and transferred by the decedent under State law, Federal authorities are not bound by a determination of such interest made by a State trial court in a proceeding in which the United States is not a party. State law as announced by the highest court of the State is to be followed, but where there is no decision by the highest court, Federal authority must apply what it finds to be the State law after giving "proper regard" to relevant decisions of other State courts.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Bosch, Second National Bank of New Haven, 387 U.S. 456, Ct. D. 1915, 1967–2 C.B. 337.

146.29 Divorce invalidated by State court. Where a State court, in a proceeding in which there is personal jurisdiction of the parties or jurisdiction of the subject matter of the action, declares a prior divorce to be invalid, the Revenue Service will usually follow the later court decision rather than the prior divorce decree for Federal income, estate, and gift tax purposes. The Service will not follow the *Borax* and *Wondsel* decisions.§§20.2056(a)–1, 25.2523(a)–1. (Secs. 71, 215, 2056, 2523; '54 Code.)

Rev. Rul. 67–442, 1967–2 C.B. 65.

146.30 Dower interest; commuted value. The commuted value of a widow's dower, if requested and paid in accordance with the applicable State law, is a nonterminable interest that qualifies for the marital deduction. Rev. Rul. 279 revoked. Modified by Rev. Rul. 83–107. §20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 72–7, 1972–1 C.B. 308.

146.31 Dower interest; commuted value. An estate can deduct, under section 2056, the amount paid to the decedent's spouse under a negotiated settlement of the spouse's dower claim, if the settlement is a bona fide compromise resulting from the spouse's assertion of an enforceable right for commutation, and the amount is not more than the commuted value of the dower interest the spouse would have received in a court proceeding. Rev. Rul. 72–7 modified; Rev. Rul. 66–139 clarified. §20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 83–107, 1983–2 C.B. 159.

146.32 Dower interest; Florida. The dower interest obtained by a widow on her proper election under Florida law to take against her husband's will qualifies for the marital deduction.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 72–8, 1972–1 C.B. 309.

146.33 Election to take under will. By will, the decedent left her entire estate to her son. Her surviving husband elected to take his statutory share under New York law, against the will. He then divided his share into three equal parts and gave it to the son's three children. *Held,* the decedent's estate was entitled to a marital deduction for the share of the estate which passed to the surviving husband under his election. (Sec. 2056, '54 Code.)

Isaac Harter, Jr., 39 T.C. 511, Acq., 1963–2 C.B. 4.

146.34 Election to take under will; portion of distribution diverted to trust. A decedent's widow, who elected to take under the provisions of decedent's will and whose marital deduction was based on the full distribution amount to which she was entitled, as executrix of the estate distributed a lesser amount to herself and distributed the remainder to which she was entitled as a taxable gift to a residuary trust, created under the will, of which she was the trustee and life beneficiary. *Held,* under Iowa law, the widow's election to take under the will constituted an acceptance of the property after which there could be no disclaimer; therefore, the full amount to which she was entitled under the will "passed" to her and the marital deduction was properly computed. (Sec. 2056, '54 Code.)

S. E. Parker, 62 T.C. 192, Acq., 1974–2 C.B. 4.

146.35 "Estate equalization clause," alternate valuation date. Property passing to the decedent's spouse pursuant to an "estate equalization clause" qualifies for the marital deduction under section 2056 even though the clause allows for valuation of the spouse's estate on the alternate valuation date if elected for the estate of the decedent. §§20.2032–1, 20.2056(b)–1. (Secs. 2032, 2056; '54 Code.)

Rev. Rul. 82–23, 1982–1 C.B. 139; Charles W. Smith, 66 T.C. 415, Nonacq. withdrawn and Acq. substituted, 1982–1 C.B. 1; Fritz L. Meeske, 72 T.C. 73, Acq., 1982–1 C.B. 1.

146.36 "Estate trust". A bequest in trust qualifies for the marital deduction even though the trustee may accumulate the income during the surviving spouse's lifetime and retain unproductive property as part of the trust corpus, since the corpus and any accumulated income is to be paid to the estate of the spouse upon her death.§20.2056(a)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 68–554, 1968–2 C.B. 412.

146.37 "Estate trust" with "power of appointment trust". A decedent bequeathed to his wife a life income interest in a trust with a provision that on her death the corpus would be distributed to her executor or administrator to the extent necessary to pay the costs of administering her estate and costs arising by reason of her death. The balance of the corpus would be distributed in accordance with her will. The trust effectively combines the features of an estate trust with a life estate power of appointment trust, and qualifies for the marital deduction. Distinguished by Rev. Rul. 75–128.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 72–333, 1972–2 C.B. 530.

146.38 "Estate trust" with "power of appointment trust". The marital deduction is not allowable with respect to a testamentary trust created by a decedent that provided, life income to his spouse in the amount the trustee deemed necessary, accumulation of undistributed income, distribution on the spouse's death of amounts deemed necessary in the trustee's discretion for costs of administration and arising due to her death, and the balance distributed as appointed by the spouse's will or, if not appointed, paid to her estate. Rev. Rul. 72–333 distinguished. §20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 75–128, 1975–1 C.B. 308.

146.39 Formula marital deduction clause. The value of life insurance proceeds, not included in the gross estate, that were paid to decedent's wife on policies transferred to her 13 years prior to decedent's death does not reduce the allowable marital deduction under a formula marital deduction clause in the decedent's will containing the words "which qualify for the marital deduction," without any clearly expressed modification indicating a special or restricted meaning of such words.§20.2056(a)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 74–42, 1974–1 C.B. 281.

146.40 Formula marital deduction clause; pre-1977 will. The entire gross estate of a decedent who died in 1978 consists of probate property. The value of the adjusted gross estate is $360,000. The decedent's will, executed in 1975 and not amended after 1976, provides that the surviving spouse is to receive an amount equal to two-thirds of the maximum marital deduction allowable for federal estate tax purposes. The state of which the decedent was a resident has not enacted any statute construing formula marital deduction clauses in light of the provisions of the Tax Reform Act of 1976. The allowable marital deduction for the estate is $120,000. §20.2056(c)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 79–304, 1979–2 C.B. 337

146.41 Formula marital deduction clause; pre-1977 will. An individual executed a will containing a maximum formula marital deduction clause in 1975, transferred $210,000 to the spouse in 1977, died in 1978, and left an adjusted gross estate valued at $300,000. The will was not amended after 1976, and the decedent's state of residence has not enacted a statute construing formula marital deduction clauses with respect to the provisions in the Tax Reform Act of 1976. The estate is allowed a marital deduction for the entire $210,000. §20.2056(c)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 80–148, 1980–1 C.B. 207.

146.42 Installment contract proceeds. A decedent who had entered into an agreement to sell land under an installment contract bequeathed all personal property to the surviving spouse and devised all real property to another person. The decedent's interest in the installment contract was personal property under state law, and, although the devisee held legal title to the land subject to the right of the spouse to receive all payments under the contract, the right to receive the contract proceeds vested absolutely in the spouse. The spouse's right to receive the installment payments is a deductible terminable interest under section 2056. §20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 79–224, 1979–2 C.B. 334.

146.43 Installment payment of tax; interest. A decedent's will provided for a specific legacy to the decedent's parents with the balance of the estate to be divided equally between the decedent's spouse and child. The will stipulated that the parents' legacy was to be free of all death taxes. State law provides that property passing to the surviving spouse does not generate any death taxes and that interest payable with respect to death taxes must be apportioned in the same fashion as the taxes themselves. Interest paid on taxes deferred under section 6166A does not reduce the value of property passing to the surviving spouse for purposes of the marital deduction. §§20.2053–3, 20.2056(b)–4, 20.6166–1. (Secs. 2053, 2056, 6166A; '54 Code.)

Rev. Rul. 80–159, 1980–1 C.B. 206.

146.44 Insurance proceeds; community property; Texas. Where an insured domiciled in Texas takes out a policy of life insurance, one premium being paid out of the insured's separate funds before marriage and the balance of the premiums paid out of community funds, the policy constitutes the separate property of the insured and the proceeds are includible in his gross estate; however, a claim by the community for reimbursement for premiums paid with community funds against the insured's estate may be allowed. Modified by Rev. Rul. 80–242. §§81.26, 81.27, 81.36, 81.47(a). (Secs. 811(g), 812(b), 812(e), '39 Code; Secs. 2042, 2051, 2056, '54 Code.)

Rev. Rul. 54–272, 1954–2 C.B. 298.

146.45 Insurance proceeds; contingent and guaranteed interests. No marital deduction was allowable for any part of life insurance proceeds payable to the widow in 240 guaranteed monthly installments, since the portion of the proceeds covering the cost of funding the widow's life annuity after the 20-year period of guaranteed payments could be treated as a separate "property" for purposes of applying the terminable interest rule. No separate funds were kept or required to be kept with respect to the certain and the contingent interests, and the insurer's separate actuarial bookkeeping entries with respect to such interests in no way created separate properties.§§81.47a, 20.2056(b)–1. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Meyer, 364 U.S. 410, Ct. D. 1860, 1961–1 C.B. 779.

146.46 Insurance proceeds; election of settlement options. An insurance policy owned by a decedent, that named her spouse as beneficiary, allowed the spouse to appoint the proceeds to his estate only after revoking the contingent beneficiaries, and permitted the election, exercisable even later than thirteen months after the decedent's death, of any one of four settlement options payable within one month of the election, qualified for a marital deduction pursuant to section 2056(c)(6). (Sec. 2056, '54 Code.)

Blanche T. Fiedler, 67 T.C. 239, Acq., 1977–1 C.B. 1.

146.47 Insurance proceeds; National Service Life Insurance. The proceeds of a National Service Life Insurance policy, payable to the widow of a decedent who had paid the initial premiums from his separate funds while a resident of a common law State and all subsequent premiums from community funds while a resident of a community property State, are not community property and their full value is includible in the decedent's gross estate. The value of such proceeds qualifies for the marital deduction under section 2056(a) of the Code, and no amount need be subtracted by reason of section 2056(c)(2)(B)(iii) in computing the limitation of the marital deduction.§20.2056(c)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 74–312, 1974–2 C.B. 320.

146.48 Insurance proceeds; retained by insurer. The power conferred upon the surviving spouse to withdraw a specific portion of insurance proceeds retained by the insurer in a single fund did not operate to create a single or separate fund of the portion of the proceeds subject to the power of appointment so as to qualify the entire proceeds, or any portion thereof, for the marital deduction.§81.47(a). (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 54–553, 1954–2 C.B. 303.

146.49 Insurance proceeds; retained by insurer. A surviving spouse possesses a power of appointment where an insurance policy contains a provision that proceeds are to be retained by the insurance company and interest thereon paid monthly to the surviving spouse for life and the right exercisable by her alone and in all events to direct the company to pay the entire proceeds at her death to her executors, administrators or assigns. Accordingly, the proceeds of the policy qualify for the marital deduction.§81.47a. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 55–277, 1955–1 C.B. 456.

146.50 Insurance proceeds; terminable interest; second beneficiary. The interests of two beneficiaries of a life insurance policy included in the insured's estate, the decedent's surviving spouse receiving monthly payments for life and another beneficiary receiving monthly payments until age 21 or death, whichever occurs first, are separate and distinct interests. The value of the proceeds passing to the surviving spouse is not a terminable interest and qualifies for the marital deduction.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 77–130, 1977–1 C.B. 289.

146.51 Insurance proceeds; terminable interest; secondary beneficiary. Where payment of insurance proceeds is to be made to decedent's surviving spouse only if living upon receipt by the insurer of due proof of the insured's death, otherwise to named secondary or contingent beneficiaries, the interest passing to the spouse does not come within the exception to the terminable interest rule provided for certain interests conditioned n survival for a limited period, so as to qualify for the marital deduction.§81.47(b). (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 54-121, 1954-1 C.B. 196.

146.52 Insurance proceeds; terminable interest; secondary beneficiary. Where insurance proceeds are to be paid to decedent's surviving spouse while living with named secondary or contingent beneficiaries, in the event she should die before having received the guaranteed monthly installments for 120 months, the marital deduction is disallowed by reason of the terminal interest rule even though the widow has a life expectancy of more than ten years. (Sec. 2056, '54 Code.)

Rev. Rul. 55-733, 1955-2 C.B. 388.

146.53 Insurance proceeds; withdrawal rights. Decedent left proceeds of life insurance policies to his wife. The policy provided for payment of the face amount upon due proof of death of the insured. The beneficiary provisions provided for payment of interest on the proceeds monthly to the widow, the first interest payment becoming due 30 days after receipt of due proof of decedent's death. On interest due dates, the widow could elect to withdraw the full amount of the policy remaining. *Held,* the widow's withdrawal rights existed from the moment of the insured's death, were exercisable in all events, and therefore, qualified for the marital deduction. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

John J. Cornwell, 37 T.C. 688, Acq., 1964-1 (Part 1) C.B. 4.

146.54 Insurance proceeds; withdrawal rights. The proceeds of an insurance policy on the decedent's life were left with the insurer, interest to be paid monthly to his widow. She could withdraw the proceeds only on an interest due date, in multiples of $500, and after 90 days' prior notice to the insurer. If the surviving spouse died within one year of decedent's death and before withdrawing the proceeds, the remaining amount would be paid to decedent's administrators or executors. *Held,* the power of appointment held by the surviving spouse came into existence immediately upon her husband's death and was "exercisable in all events." The limitations imposed thereon were merely formal rather than substantive. Accordingly, the insurance proceeds qualify for the marital deduction. (Sec. 2056, '54 Code.)

Charles R. Jennings, 39 T.C. 417, Acq., 1964-1 (Part 1) C.B. 4.

146.55 Inter vivos transfer; prior to marriage; predeceased spouse. An inter vivos transfer by a decedent, within 3 years of the decedent's death, to a spouse who died prior to the decedent will not qualify for the marital deduction. A similar transfer by a decedent to a person other than a spouse who survives the decedent and is the decedent's spouse at the time of the decedent's death qualifies for the marital deduction. §§20.2013-1, 20.2056(a)-1. (Secs. 2013, 2035, 2056; '54 Code.)

Rev. Rul. 79-354, 1979-2 C.B. 334.

146.56 Interest in property; joint and reciprocal will. Decedent and his wife executed a joint and reciprocal will providing that all property of the first deceased would become the property of the survivor in fee simple and absolute, that upon the death of both certain specific property would go to named individuals, and that the remainder would be converted into cash and divided among relatives. There was no provision limiting the surviving spouse's use or disposition of property during that spouse's lifetime. *Held,* the surviving spouse is entitled to a marital deduction with respect to property received under the joint and reciprocal will. (Sec. 2056, '54 Code.)

James Mead Vermilya, 41 T.C. 226, Acq. in result, 1973-1 C.B. 2.

146.57 Joint estates; simultaneous deaths. In states which have adopted the Uniform Simultaneous Death Act, a wife will be presumed to have survived her husband in a situation where it cannot be determined that they have died other than simultaneously, with respect to half of the property held by the entirety. This property passes to and is includible in her estate, although the property has been purchased entirely with consideration furnished by the husband. Therefore, the husband's estate is entitled to a marital deduction to the extent of the one-half interest passing to the wife. Modified by Rev. Rul. 76-303.§§20.2033-1, 20.2040-1, 20.2056(a)-1. (Secs. 2033, 2040, 2056; '54 Code.)

Rev. Rul. 66-60, 1966-1 C.B. 221.

146.58 Joint estates; simultaneous deaths. In states that have adopted the Uniform Simultaneous Death Act, a husband and wife are each considered to have survived with respect to one-half of property held by them as tenants by the entirety if it cannot be determined that they died other than simultaneously. In the absence of evidence to indicate the wife furnished any consideration for the property, the entire value of the property is includible in the husband's gross estate and a one-half interest in the wife's gross estate. Rev. Rul. 66-60 modified. §§20.2033-1, 20.2040-1. (Secs. 2033, 2040; '54 Code.)

Rev. Rul. 76-303, 1976-2 C.B. 266.

146.59 Jointly owned property; insurance proceeds; joint and mutual will. Jointly owned property, restricted by a joint and mutual will as to its ultimate distribution, and life insurance proceeds passing to the surviving wife qualify for the marital deduction. Upon her death, the total value of the remainder of the property held jointly with her husband and the proceeds of life insurance on his life are includible in her gross estate.§§20.2036-1, 20.2056(b)-1. (Secs. 2036, 2056; '54 Code.)

Rev. Rul. 71-51, 1971-1 C.B. 274.

146.60 Life insurance policy pledged as collateral security. Decedent pledged a $10,000 life insurance policy prior to his death as collateral security for an indebtedness of $20,000. After his death the indebtedness was paid out of property of the estate and the widow, as beneficiary, received the policy. The Tax Court agreed the pledge constituted an incumbrance but held that the value of the property interest which passed to the widow was not diminished by said incumbrance. Under State law the insurance proceeds were the property of the beneficiary, and the widow could have required that the indebtedness be paid out of other assets of the estate or that she be subrogated to the claim of the lender against the estate. Therefore, the proceeds of the policy qualified for the marital deduction. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

D. Byrd Gwinn, 25 T.C. 7, Acq., 1956-2 C.B. 4.

146.61 Monthly payment; specific portion of trust corpus. A bequest in trust which provides for the monthly payment to decedent's widow of a fixed amount may qualify for the marital deduction under section 2056(b)(5) of the Code where the amount of corpus required to produce the fixed monthly stipend can be computed by the use of projected rates of return available to the trustee under reasonable investment conditions. Section 20.2056(b)-5(c) of the regulations, which requires that the "specific portion" of a property interest must be expressed as a fractional or percentile share of the total income from a property interest to qualify for the deduction, improperly restricts the scope of the statute in the context of this case.§20.2056(b)-5. (Sec. 2056, '54 Code.)

Northeastern Penna. Nat'l Bank & Trust Co., 387 U.S. 213, Ct. D. 1916, 1967-2 C.B. 343.

146.62 Payment under antenuptial agreement. A payment made by the executors of a decedent's estate to the surviving spouse pursuant to her claim under an antenuptial agreement, whereby she relinquished any marital rights she might acquire for a stated sum from the decedent's estate, is considered as having "passed from the decedent to his surviving spouse" and qualifies for the marital deduction provided all other statutory requirements are satisfied. §§20.2053-4, 20.2056(e)-1. (Secs. 2053, 2056; '54 Code.)

Rev. Rul. 68-271, 1968-1 C.B. 409.

146.63 Pecuniary bequest. Decedent's will provided for a division of his estate between his wife and children. Under the will, the executor could distribute assets in kind at their values as finally determined for Federal estate tax purposes in satisfaction of the marital bequest to the widow (pecuniary bequest.) The Commissioner contended that the pecuniary bequest was not determinable for purposes of the marital deduction under Rev. Proc. 64-19 because under the terms of the will the executor was empowered to distribute assets which had depreciated in value. *Held,* the terms of the will and state law imposed upon the executor an obligation to make fair and equitable division of property among the beneficiaries so that any depreciation or appreciation in value would be shared proportionately, Therefore, the bequest to the widow qualifies for the marital deduction. (Sec. 2056, '54 Code.)

Abraham Hamelsky, 58 T.C. 741, Nonacq., 1973-1 C.B. 2.

146.64 Pecuniary bequest inadequately funded. A pecuniary bequest for the benefit of a surviving spouse is inadequately funded by the executor during probate administration. In the absence of a qualified disclaimer, the marital deduction allowed is the amount that should have funded the marital trust, and the surviving spouse had made a gift to a third-party beneficiary equal to the unfunded amount. §§20.2056(a)-1, 25.2511-1. (Secs. 2056, 2511, 2518; '54 Code.)

Rev. Rul. 84-105, 1984-29 I.R.B. 28.

146.65 Pecuniary bequest or transfer in trust. The conditions under which the marital deduction may be allowed where, under the terms of a will or trust, an executor or trustee is empowered to satisfy a pecuniary bequest or transfer in trust to a decedent's surviving spouse with assets at their value as finally determined for Federal estate tax purposes are set forth.§20.2056(e)-1. (Sec. 601.105, S.P.R.; Sec. 2056, '54 Code.)

Rev. Proc. 64-19, 1964-1 (Part 1) C.B. 682.

146.66 Power of appointment; exercised in favor of charity. A decedent bequeathed to the surviving spouse who was over 80 years of age, a life estate in trust with a general power of appointment. The spouse executed an affidavit in a compliance with section 2055(b)(2) declaring the intention to exercise the power of appointment in favor of certain charitable organizations and subsequently did exercise the power by will. *Held,* the estate was entitled to both a charitable deduction under section 2055 for the value of the remainder interest and a marital deduction under section 2056 for the value of the trust. The spouse's estate was also entitled to a charitable deduction for the value of the trust. (Secs. 2055, 2056; '54 Code.)

Edna Allen Miller, 48 T.C. 251, Acq., 1978-2 C.B. 2; Ella Pfeifer, 69 T.C. 294, Acq., 1978-2 C.B. 2.

146.67 Power of appointment; limitations. Decedent's will created a trust with her husband as beneficiary, giving him all the income for life and permitting him to withdraw from the principal "as he may from time to time direct." On the husband's death, the remainder was to go to various other relatives. The husband's life interest was subject to a spendthrift clause but only to the extent, the Tax Court concluded, that it limited his right to assign and encumber that part of the principal not withdrawn from corpus and any income therefrom. *Held,* the husband was given an unlimited power to invade the principal and the value of the trust qualified for the marital deduction. (Sec. 2056, '54 Code.)

Wilhelmina L. Benjamin, 44 T.C. 598, Acq., 1965–2 C.B. 4.

146.68 Power of appointment; limitations. Decedent's will provided that the residue of his estate be given to his surviving spouse with full power to dispose of such property in her discretion and that it was his "wish and desire," upon the death of his spouse, any remaining property pass to his brother and sister or their heirs. *Held,* the interest in property passing to the decedent's surviving spouse qualified for the marital deduction either as a transfer in fee simple, the language of the will being merely precatory, or, giving effect to the precatory language, as creating a life estate with full power of appointment. (Sec. 2056, '54 Code.)

Yale C. Holland, 64 T.C. 499, Acq., 1975–2 C.B. 1.

146.69 Power of appointment; limitations; Georgia. The Georgia Superior Court construed decedent's will as giving his widow a life estate with power to consume with respect to certain property. The Court declared another bequest void for vagueness, thereby creating a partial intestacy with a resulting residuary estate. The Tax Court accepted the Superior Court's interpretation of the will and held that the widow received a one-fifth interest in the residuary estate and such interest qualified for the marital deduction. (Sec. 2056, '54 Code.)

William A. Landers, Sr., 38 T.C. 828, Acq., 1964–2 C.B. 6.

146.70 Power of appointment; limitations; New Jersey. The bequest of a residuary estate to a surviving spouse for the spouse's unrestricted use during life with any remainder to the son and his heirs, under New Jersey law, creates a life estate with a power of appointment exercisable by the spouse in all events so that the interest passing to the spouse is not a terminable interest and qualifies for the marital deduction. §20.2056(b)–5. (Sec. 2056, '54 Code.)

Walter L. Edwards, 58 T.C. 348, Acq., 1978–2 C.B. 2.

146.71 Power of appointment; limitations; Virginia. A bequest of a life estate, not in trust, in favor of the surviving spouse coupled with the unrestricted power to consume and dispose of the property, with any remainder at the death of the spouse passing to others specified in the will, is an unrestricted power of appointment under Virginia law and the estate is entitled to a marital deduction for the value of the bequest.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 77–30, 1977–1 C.B. 291.

146.72 Power of appointment; restricted. Where the terms of a trust do not confer upon the decedent's surviving spouse the power, exercisable by her alone and in all events, to appoint the entire corpus or a specific portion thereof free of trust and if others are named to take so much of the property as may remain upon her death, the interest passing to such spouse is a terminable one and does not qualify for the marital deduction.§81.47a. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 55–395, 1955–1 C.B. 458.

146.73 Property in two states; intestate decedent. The proper method is set forth for computing the Federal estate tax and marital deduction for the estate of an intestate decedent with property in the state of domicile and in another state which does not equitably apportion state or Federal death taxes.§20.2056(b)–4. (Sec. 2056, '54 Code.)

Rev. Rul. 77–345, 1977–2 C.B. 337.

146.74 Property interest in insurance policies; effect of State trial court decree. Decedent's wife was the direct beneficiary of three identical (except for benefits) life insurance policies. Prior to his death, decedent exercised his right to elect payment of the net proceeds in accordance with two optional methods, one permitting the beneficiary to leave any part of the net proceeds with the insurer and receive payments of interest, the other permitting the beneficiary to receive the proceeds in 240 installments. Decedent's estate successfully sued the insurer for the entire proceeds of one policy. The insurer did not appeal but declared it would not pay over the proceeds on the other policies without a court order. *Held,* the proceeds of all three policies qualified for the marital deduction. The Tax Court found that in the absence of authority to the contrary, the construction of one policy in an adversary proceeding by the State trial court was binding on the Tax Court with respect to the widow's property interests in the other two policies. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

William Walker Wynekoop, 24 T.C. 167, Acq., 1955–2 C.B. 10.

146.75 Residuary bequest; valuation; estate expenses; South Carolina. A South Carolina decedent's will directed, without apportionment, that debts and administration expenses be paid promptly and, after providing for specific and general bequests, the will gave one-third of the residue to the surviving spouse. The value of the property interests passing to the surviving spouse under the residuary clause is not charged with any such debts or expenses in computing the marital deduction under section 2056(a). §20.2056(b)–4. (Sec. 2056, '54 Code.)

Rev. Rul. 78–419, 1978–2 C.B. 244.

146.76 Satisfaction of spouse's debt. A bequest to satisfy a debt of a decedent's surviving spouse, with respect to which the decedent had no liability, qualifies for the marital deduction. §20.2056(e)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 79–383, 1979–2 C.B. 337.

146.77 Settlement payment; common law spouse. An amount paid to a decedent's alleged common law surviving spouse in settlement of a claim to dower in the decedent's estate does not qualify for the marital deduction in the absence of evidence that the alleged spouse was the decedent's legal spouse. §20.2056(a)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 76–155, 1976–1 C.B. 286.

146.78 Settlement payment; compromise for dower interest. A settlement payment made by the executor of a decedent's estate to decedent's surviving spouse in compromise of a claim made by her in good faith for an absolute dower interest under State law, following arm's-length negotiations, qualifies for the marital deduction. Clarified by Rev. Rul. 83–107. §20.2056(e)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 66–139, 1966–1 C.B. 225.

146.79 Settlement payment; conditioned upon favorable Service determination. A cash payment in settlement of a surviving spouse's claim to a dower interest, paid under an agreement containing the stipulation that the payment was conditioned on the Service's determination that the payment would qualify for the marital deduction, is not a terminable interest and qualifies for the marital deduction. Rev. Rul. 65–144 distinguished. §§20.2056(b)–1, 20.2056(e)–2. (Sec. 2056, '54 Code.)

Rev. Rul. 76–199, 1976–1 C.B. 288.

146.80 Settlement payment; made in good faith. Decedent and her husband entered into an antenuptial agreement renouncing any future claims to the other's property. On the same day, decedent transferred certain intangible property to a trust for her children by a previous marriage. After their marriage she executed a will and bequeathed $5,000 to her husband. Decedent died November 1, 1948, and on November 18 the widower informed the executor of her estate that he was asserting claims against the estate on the grounds that both the antenuptial agreement and the trust instrument were invalid. No formal legal proceeding was commenced, but the executor and the widower entered into a written settlement whereby he agreed to receive $10,250 in satisfaction of his claim and to waive his right to the $5,000 bequest. The probate court approved the settlement in a non-adversary proceeding. *Held,* the widower's claim was valid and made in good faith, and settled in arm's length negotiations. Therefore, the amount of the settlement was allowable as a marital deduction. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Gertrude P. Barrett, 22 T.C. 606, Acq., 1954–2 C.B. 3.

146.81 Settlement payment; will contest. Decedent executed a new will which attempted to revoke a joint will made with his former deceased wife and an antenuptial agreement made with his second wife. Decedent's son sought probate for the joint will in Michigan. The widow's objection filed in the Michigan proceeding was overruled and she sought probate of the later will in Florida. An agreement between the widow and decedent's children became the basis of the Florida decree and the widow did not prosecute her appeal in the Michigan action. *Held,* amounts paid the widow under the agreement were includible in the marital deduction of decedent's estate as amounts paid in settlement of a will contest. (Sec. 2056, '54 Code.)

Leo J. Dutcher, 34 T.C. 918, Acq., 1961–1 C.B. 4.

146.82 Support allowance during settlement. The interest in an estate which passes to a surviving spouse pursuant to State law in the form of an allowance for support during the period of settlement of the deceased spouse's estate must constitute a vested right of property in order to qualify for the marital deduction.§81.47(a). (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 83, 1953–1 C.B. 395.

146.83 Support allowance during settlement. Amounts allowed for the support of the surviving spouse during the period of settlement of the deceased spouse's estate, which may otherwise constitute a nondeductible interest, may nevertheless qualify for the estate tax marital deduction to the extent that all or any part of the residuary estate of the decedent passed to his surviving spouse by intestacy or as beneficiary under his will. (Sec. 2056, '54 Code.)

Rev. Rul. 56–26, 1956–1 C.B. 447.

146.84 Survivor's allowance; antenuptial agreement. The marital deduction was allowable with respect to the full value of property interests passing to the surviving spouse under a decedent's will where the transfer was in lieu of lesser rights which she had under an antenuptial agreement. Any additional claim asserted against the estate by reason of such agreement was not allowable as a deduction for claims against the state.§81.47(a). (Sec. 812(e), '39 Code; Sec. 056, '54 Code.)

Rev. Rul. 54–446, 1954–2 C.B. 303.

46.85 Taxes; apportionment; Mississippi. Decedent, a resident of Mississippi, bequeathed ertain property to her husband, but the will made o mention as to how the estate taxes were to be aid. The executors of the estate paid the taxes ut of the residuary estate. *Held,* no part of the ax was chargeable to the property specifically bequeathed to decedent's husband, and the full value f the property qualifies for the marital deduction. State law governed and in Mississippi, and other tates which do not apportion death taxes, estate axes are similar to administrative expenses and hould be deducted from the residuary estate. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rosalie Cahn Morrison, 24 T.C. 965, Acq., 1956–2 C.B. 7.

146.86 Taxes; apportionment; Virginia. The marital deduction allowable under section 2056 of the Code with respect to property passing to the surviving spouse of a deceased resident of Virginia, whose will contained no provision directing the payment of Federal estate tax or Virginia inheritance tax, is reduced by the amount of Virginia inheritance tax due with respect to such property and by the proportionate part of the Federal estate tax attributable to the spouse's inheritance tax burden.§20.2056(b)–4. (Sec. 2056, '54 Code.)

Rev. Rul. 77–313, 1977–2 C.B. 335.

146.87 Taxes; apportionment; Virginia; after 1979. For decedents dying after December 31, 1979, the marital deduction allowable under section 2056 with respect to property passing to the surviving spouse of a deceased resident of Virginia, whose will contained no provision directing the payment of federal estate tax or Virginia estate tax, is not reduced by the amount of Virginia estate tax due with respect to the estate. §20.2056(b)–4. (Sec. 2056, '54 Code.)

Rev. Rul. 81–165, 1981–1 C.B. 472.

146.88 Terminable interest; six-month limitation period. The method for computing the six-month limitation period established by section 2056(b) of the Code to determine whether the interest passing to a decedent's surviving spouse is a "terminable interest" and qualifies for the marital deduction.§20.2056(b)–3. (Sec. 2056, '54 Code.)

Rev. Rul. 70–400, 1970–2 C.B. 196.

146.89 Transfers in trust; administrative powers conferred on fiduciary. Examples are provided to illustrate the principle that directions to, or powers conferred upon, an executor or trustee under a will or inter vivos trust instrument or by local law (as aids in managing trusts) do not result in the disallowance or diminution of the marital deduction.§§20.2056(b)–5, 25.2523(e)–1. (Secs. 2056, 2523; '54 Code.)

Rev. Rul. 69–56, 1969–1 C.B. 224.

146.90 Transfers in trust; administrative powers granted to trustee. An interest passing in trust may qualify for the marital deduction despite provisions granting to the trustees administrative powers, including the power to determine the allocation of receipts and disbursements between income and corpus, if the local law applicable to the administration of the trust places reasonable limitations on the exercise of such powers.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 66–39, 1966–1 C.B. 223.

146.91 Transfers in trust; discretion granted trustee. Decedent's will established a marital trust designed to qualify for the marital deduction. The provision for the distribution of the income from the trust required the trustees to pay, at least annually, so much of the net income of the trust to decedent's wife as in their "conclusive discretion" should be expended to accomplish the purpose of the trust. *Held,* since the stated purpose of the trust was to qualify for the marital deduction and, under Texas law, the trustees must comply with the said purpose, the words "conclusive discretion" do not authorize the trustees to withhold payments of the trust income; therefore, the trust qualifies for the marital deduction. (Sec. 2056, '54 Code.)

James S. Todd, Jr., 57 T.C. 288, Acq., 1973–2 C.B. 3.

146.92 Trust; fiduciary's discretion to pay taxes. A decedent bequeathed one-half of the adjusted gross estate in trust for the surviving spouse. The will directed that all taxes be paid out of the nonmarital portion of the estate, but granted the fiduciary discretion, unrestricted under local law, to pay the taxes from the marital trust interest, which otherwise qualified for the marital deduction. The fiduciary did not exercise the discretion. The marital deduction allowed the estate for the marital trust interest is reduced by the amount of the taxes that could be paid from the marital share. §§20.2056(b)–4, 20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 79–14, 1979–1 C.B. 309.

146.93 Trust; income for life and unlimited power to invade corpus. The decedent's will left the residue of his estate in trust with the income payable to his widow for life and a stated amount payable in all events. The widow was given the power to invade corpus if she should so require, and she was to be the "sole judge" as to how much she should require. At her death principal remaining was payable one-half to her estate and one-half to their children. *Held,* the widow received an unlimited power to invade corpus so as to qualify the bequest in trust for the marital deduction under section 812(e)(1)(F) of the 1939 Code. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Harry A. Ellis, 26 T.C. 694, Nonacq., 1957–2 C.B. 8.

146.94 Trust; income to surviving spouse and parent. A decedent created a testamentary trust for the benefit of the decedent's only living parent and the surviving spouse, who was given a general power of appointment over the trust remainder and all the annual income of the trust, with the exception of amounts considered advisable by the trustee to maintain the parent in the parent's customary standard of living. The spouse has an unqualified right to the income of no specific portion of the trust and no martial deduction is allowable. §20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 79–86, 1979–1 C.B. 311.

146.95 Trust; incompetent beneficiary. The mental incompetence of a lifetime income beneficiary of a testamentary trust to exercise a power of appointment created in 1950 did not prevent such power from being general and the value of the principal of such trusts is includible in said beneficiary's gross estate upon her death. Also, the value of the trust at the date of its creation would qualify for the marital deduction despite the decedent's incompetence. (Secs. 2041, 2056; '54 Code.)

Rev. Rul. 55–518, 1955–2 C.B. 384.

146.96 Trust; incompetent wife-beneficiary. The value of assets in a trust created by the husband's will to provide lifetime income for his wife who could bequeath the trust principal by her will, qualifies for the marital deduction and is includible in the wife's gross estate even though she was mentally ill from the time of her husband's death to the time of her death and, under state law, legally incapable of exercising her testamentary power of appointment. §§20.2041–1, 20.2056(b)–5. (Secs. 2041, 2056; '54 Code.)

Rev. Rul. 75–350, 1975–2 C.B. 366.

146.97 Trust; life estate; power of appointment to surviving spouse. A surviving spouse who was granted a life estate, in trust, coupled with the power to appoint the trust corpus, subject to the consent of the remaindermen or the trustee, possesses a general power of appointment under section 2041 over the trust assets, the value of which is includible in the gross estate of the spouse, but is not allowable as a marital deduction to the decedent's estate under section 2056. §§20.2041–3, 20.2056(b)–5. (Secs. 2041, 2056; '54 Code.)

Rev. Rul. 82–156, 1982–2 C.B. 216.

146.98 Trust; life estate; power of appointment to surviving spouse; power of trustee to distribute income. A marital deduction trust qualifies for the marital deduction if, under state law, the trustee has the power to distribute trust income to a relative or to a court appointed representative for the benefit of the spouse, or if the trustee may spend trust income directly for the benefit of the spouse, if the spouse becomes legally disabled. §20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 85–35, 1985–1 C.B. 328.

146.99 Trust; qualification; accumulation of income for benefit of third person. No deduction if allowable with respect to an otherwise qualifying marital deduction trust the income from which is to be used to accumulate $40,000 for the education of the decedent's grandchildren before any amounts are paid to the surviving spouse.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 77–444, 1977–2 C.B. 341.

146.100 Trust; qualification; disqualifying ambiguous power. Under a will providing for both a marital deduction trust and a residuary trust, and granting to the trustees the power to invest trust principal in non-income-producing life insurance, a clause providing that any power given to the trustees is void if the power jeopardizes the marital deduction does not require disallowance of the marital deduction and the power to invest in life insurance is only applicable to the residuary trust. Rev. Rul. 65–144 distinguished. §20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 75–440, 1975–2 C.B. 372.

146.101 Trust; qualified terminable interest; qualified disclaimer by surviving spouse. A surviving spouse's disclaimer of property in accord with the requirements of section 2518 is an effective disclaimer even though a section 2056(b)(7) election has been made with respect to the property by the executor of the estate. §20.2056(b)–1. (Secs. 2056, 2518; '54 Code.)

Rev. Rul. 83–26, 1983–1 C.B. 234.

146.102 Trust; remainder to "next of kin." No marital deduction is allowable for the residue of the estate of a decedent that passes to a trust under the terms of which the decedent's surviving spouse will receive the trust income for life and the trust remainder is payable at the spouse's death to the "next of kin" of the spouse.§20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 77–170, 1977–1 C.B. 290.

146.103 Trust; surviving spouse; life estate with power of appointment. A marital deduction is not allowable with respect to a testamentary trust that provides for payment of trust income to the surviving spouse quarterly until death, a power of appointment conferred on the surviving spouse, and retention of the assets in trust for two years after the death of the surviving spouse. §20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 76–446, 1976–2 C.B. 295.

146.104 Trust; surviving spouse; life estate with power of appointment; Maryland. A testamentary trust providing that a decedent's spouse will receive the income of a trust for life and may appoint the corpus by will is not a general power of appointment under Maryland law, and the value of the trust corpus is neither allowed to the decedent's estate as a marital deduction under section 2056 nor includible in the spouse's gross estate under section 2041. §§20.2041–1, 20.2056(b)–5. (Secs. 2041, 2056; '54 Code.)

Rev. Rul. 76–502, 1976–2 C.B. 273.

146.105 Trust; surviving spouse; life estate with power of appointment; New York. A testamentary bequest of a life estate in trust to a surviving spouse giving to her the power to appoint by her will the remainder interest in the trust "to such person or persons whom she designates" constitutes a power to appoint to her own estate under New York law, thereby qualifying the value of the interest subject to such power for the marital deduction.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 74–120, 1974–1 C.B. 282.

146.106 Trust; surviving spouse's power to invade corpus; descendant's welfare. A bequest to a decedent's surviving spouse with a provision whereby she may request the trustees to pay a portion of the corpus to her for support of the decedent's descendants qualifies for the marital deduction.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 72–154, 1972–1 C.B. 310.

146.107 Trust; survivorship annuity. A decedent, who was the grantor and life income beneficiary of a trust, made an agreement with the remainder beneficiary to terminate the succeeding life estate of the decedent's spouse in exchange for the remainder beneficiary's promise to pay an amount equal to the present value of the spouse's life estate, in 30 annual installments, to any person designated by the decedent. The decedent bequeathed the installments to the spouse with any balance remaining upon the spouse's death to be paid to the spouse's estate. The spouse's right to the payments qualifies for the marital deduction. §20.2056(b)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 79–420, 1979–2 C.B. 335.

146.108 Trust; terminable interest; "estate equalization clause". The marital portion of a marital deduction trust is not a terminable interest under section 2056(b) by reason of an "estate equalization clause" that provided it consist of a fractional interest determined by valuing both the decedent's estate and the hypothetical estate of the surviving spouse at the date of the decedent's death or the alternate valuation date, whichever was more advantageous. (Sec. 2056, '54 Code.)

Charles W. Smith, 66 T.C. 415, Nonacq., 1978–1 C.B. 3.

146.109 Trust; valuation of interest passing to surviving spouse; Massachusetts State inheritance taxes. The value of certain property in, and passing into, a marital deduction trust, created by a decedent's will and trust instrument, need not be reduced for purposes of section 2056 by reason of Massachusetts State inheritance taxes on the future interests in the marital deduction trust which become payable upon the death of the decedent's spouse, the life tenant of that trust. (Sec. 2056, '54 Code.)

Arthur Milliken, 70 T.C. 883, Acq., 1979–1 C.B. 1.

146.110 Trust income; initial payment delayed. A marital deduction is allowable for amounts transferred to an otherwise qualifying marital trust that, due to a reasonable delay in payment of administration expenses, was not funded and consequently paid no income to the surviving spouse until more than 12 months after the decedent's death. Rev. Rul. 72–283 distinguished.§20.2056(b)–5. (Sec. 2056. '54 Code.)

Rev. Rul. 77–346, 1977–2 C.B. 340.

146.111 Trust income; one-year delay in payment. A marital deduction is not allowable with respect to a testamentary trust established by a decedent, that provides for trust income of the past year to be paid quarterly in the year following that in which the income was earned. Distinguished by Rev. Rul. 77–346. §20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 72–283, 1972–1 C.B. 311.

146.112 Veteran's Administration policy; insurance proceeds. Proceeds of life insurance policies issued under the World War Veterans' Act of 1924, or the National Service Life Insurance Act of 1940 qualify for the estate tax marital deduction provided that at the death of the insured such proceeds are payable to the surviving spouse either in a lump sum or in monthly installments with any balance at her later death payable to her estate. Proceeds payable under the Servicemen's Indemnity Act of 1951 will not qualify for the estate tax marital deduction. (Sec. 2056, '54 Code.)

Rev. Rul. 57–423, 1957–2 C.B. 623.

146.113 Waiver. The estate tax marital deduction may not be waived in order to obtain a Federal estate tax benefit or for any other purpose.§§20.2013–1, 20.2056(a)–1. (Secs. 2013, 2056; '54 Code.)

Rev. Rul. 59–123, 1959–1 C.B. 248.

146.114 Widower's allowance; Maine. A widower's allowance awarded in a lump sum to decedent's widower by court order in Maine is not a terminable interest and, therefore, may qualify as a marital deduction. (Sec. 2056, '54 Code.)

Margaret R. Gale, 35 T.C. 215, Nonacq., 1964–2 C.B. 8.

146.115 Widow's allowance; California. The allowance provided by California law for a widow's support during the settlement of her husband's estate is a terminable interest which is not deductible from decedent's gross estate as an interest in property passing from decedent to his surviving spouse. Qualification of the widow's allowance for the marital deduction is determined as of the date of the testator's death, and, under California law, the widow did not have an indefeasible interest in property at the moment of her husband's death since either her death or remarriage would defeat it.§§81.47b, 20.2056(b)–1. (Sec. 812, '39 Code; Sec. 2056, '54 Code.)

Jackson, 376 U.S. 503, Ct. D. 1889, 1964–2 C.B. 522.

146.116 Widow's allowance; Georgia. A widow's support allowance under Georgia law is not a terminable interest and therefore may qualify as a marital deduction. (Sec. 2056, '54 Code.)

William A. Landers, Sr., 38 T.C. 828, Nonacq., 1964–2 C.B. 8.

146.117 Widow's allowance; Maryland. The value of property passing to a surviving widow who renounces her deceased husband's will and elects to take her statutory portion under Maryland law will not be reduced by Federal estate tax liability for purposes of the marital deduction.§20.2056(b)–4. (Sec. 2056, '54 Code.)

Rev. Rul. 72–612, 1972–2 C.B. 528.

146.118 Widow's allowance; Massachusetts. A Massachusetts widow's allowance is not a terminable interest and therefore, may qualify as a marital deduction. (Sec. 2056, '54 Code).

Michael G. Rudnik, 36 T.C. 1021, Acq. withdrawn and Nonacq. substituted, 1964–2 C.B. 9.

146.119 Widow's allowance; Michigan. A Michigan widow's allowance paid in a lump sum is not a terminable interest and therefore may qualify as a marital deduction. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Proctor D. Rensenhouse, 31 T.C. 818, Nonacq., 1973–2 C.B. 4.

146.120 Widow's allowance; Missouri. In 1957 a widow's allowance of $12,000 was authorized by the Probate Court and paid in a lump sum. *Held*, there is no provision in the Missouri Statute authorizing a recovery by the estate of any part of the allowance in case of the early death of the widow; therefore, the allowance was not a terminable interest and is deductible from gross estate as a part of the marital deduction. (Sec. 2056, '54 Code.)

Oliver B. Avery, 40 T.C. 392, Acq., 1971–1 C.B. 1.

146.121 Widow's allowance; Wisconsin; granted retroactively by Probate Court. Decedent died on October 11, 1947, and his will was admitted to probate in December. His widow elected to take under the will, which provided that she receive the net income from the estate beginning on the date of decedent's death. On December 11, the executrix began paying the widow $1,000 a month, retroactive to October 11, and paid her $23,000 during the period of administration. In September 1948, the widow petitioned the probate Court and was granted a widow's allowance of $1,000 a month for one year (later extended another year), commencing October 11, 1947. *Held*, the support allowance was granted according to Wisconsin law, which requires that the Probate Court grant a widow's allowance, and the executrix properly deducted the $23,000 as a support allowance in determining the value of the net estate. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Jean S. Alexander, 25 T.C. 600, Acq., 1956–2 C.B. 4.

Military

(See: Armed Forces)

Nonresidents

152.1 Aliens; certificate of deposit; U.S. bank fiduciary. A nonresident alien decedent's interest in a trust is treated as property without the U.S. under section 2105(b), and is thus excludable from the gross estate, even though the trust funds are held in a U.S. bank certificate of deposit at the decedent's death. Rev. Rul. 69–596 clarified. §§20.2033–1, 20.2103–1, 20.2105–1. (Secs. 861, 2033, 2103, 2105; '54 Code.)

Rev. Rul. 82–193, 1982–2 C.B. 219.

152.2 Bank deposits; Alien Property Custodian. Decedent was an alien residing in enemy territory at the time of her death in 1943. In July 1942, pursuant to court order, funds representing her remainder interest in a trust, established by a brother who had died in 1935 domiciled in New York, were deposited in a domestic bank in the name of the New York City Treasurer on behalf of the decedent. In December 1942, the Alien Property Custodian issued a vesting order under the Trading with the Enemy Act and the July 1942 court order was amended to authorize his withdrawal of the funds for the benefit of the

United States. *Held,* the vesting by the Custodian is disregarded, and the funds are excludable from the decedent's gross estate. (Sec. 863(b), '39 Code; Sec. 2104, '54 Code.)

Lina Joachim, 22 T.C. 875, Acq., 1955–2 C.B. 7.

152.3 Bank deposits; Alien Property Custodian. The funds of a nonresident alien decedent, not engaged in business in the U.S. which were vested in the Alien Property Custodian (now the Attorney General) and deposited for his account in the U.S. Treasury are includible in decedent's gross estate. (Sec. 2105, '54 Code.)

Rev. Rul. 56–421, 1956–2 C.B. 602.

152.4 Bank deposits; diplomatic officer of foreign country. A duly accredited diplomatic officer, who merely represents his government in this country, is not a person engaged in business in the U.S. Consequently, any moneys deposited with any person carrying on the banking business by or for the diplomatic officer of a foreign country, who at the time of his death is neither domiciled in nor a national of the U.S., are exempt from Federal estate tax. (Secs. 2105, 2106; '54 Code.)

Rev. Rul. 56–52, 1956–1 C.B. 448.

152.5 Bank deposits; express company in banking business. Moneys deposited by a nonresident alien not engaged in business in the U.S., with an express company engaged in the banking business, are excludable from the gross estate of such nonresident.§81.50. (Sec. 863, '39 Code; Sec. 2104, '54 Code.)

Rev. Rul. 54–114, 1954–1 C.B. 204.

152.6 Bank deposits; family foundation controlled by decedent. Decedent, a citizen and resident of the Netherlands not engaged in business in the U.S., created a family foundation for the purpose of providing funds for the education and support of his descendants and transferred cash and securities to it. He retained the power to amend or revoke the foundation and to withdraw any funds or have them transferred to his personal account. At the date of decedent's death in 1943 the foundation had cash on deposit with two New York banks, including moneys transferred from his personal accounts in the same banks while he was in enemy occupied territory. *Held,* the funds on deposit with the New York banks are excludable from gross estate as moneys deposited "by or for the decedent." (Sec. 863(b), '39 Code; Sec. 2104, '54 Code.)

Oei Tjong Swan, 24 T.C. 829, Acq., 1956–2 C.B. 8.

152.7 Bank deposits; joint account; liability of bank. A bank in possession of property standing in the name of a nonresident decedent and his wife as joint tenants, with right of survivorship, is not relieved from Federal estate tax liability and the necessity of obtaining a transfer certificate should an executor or administrator be appointed, qualified, and acting within the U.S.§81.62. (Sec. 827(b), '39 Code; Sec. 6324, '54 Code.)

Rev. Rul. 55–160, 1955–1 C.B. 464.

152.8 Bank deposits; mutual savings banks. Mutual savings banks organized under New York State laws or corresponding laws of other States, are persons carrying on the banking business within the meaning of sections 861(a) and 2105(b) of the 1954 Code. Funds on deposit by a nonresident alien decedent not engaged in business in the U.S. at the time of his death are exempt from Federal estate tax.§81.50. (Sec. 863, '39 Code; Sec. 2105, '54 Code.)

Rev. Rul. 54–623, 1954–2 C.B. 14.

152.9 Bank deposits; U.S. bank as fiduciary. Special funds deposited in a bank in the U.S. by or for a nonresident alien and held by the bank as a fiduciary are treated as property within the U.S. G.C.M. 22419 superseded. Clarified by Rev. Rul. 82–193. §20.2105–1. (Sec. 2105, '54 Code.)

Rev. Rul. 69–596, 1969–2 C.B. 179.

152.10 Bank deposits in trust; situs; United Kingdom convention. Checking and savings accounts held in trust for a nonresident alien decedent are debts under the U.S.—United Kingdom Estate Tax Convention; therefore, the situs of the accounts is deemed to be the domicile of the decedent at date of death.

Rev. Rul. 72–189, 1972–1 C.B. 442.

152.11 Citizen of Norway; community property. The gross estate of a decedent citizen and resident of Norway includes only one-half of the value of real property located in a State that recognizes the vested interest of the spouse in Norwegian community funds used to purchase the property in the decedent's name.§§20.2033–1, 20.2103–1. (Secs. 2033, 2103; '54 Code.)

Rev. Rul. 72–443, 1972–2 C.B. 531.

152.12 Citizens; citizenship lost on marriage to foreign subject. A native born U.S. citizen who as a result of her marriage to a British subject lost her citizenship under section 3 of the Expatriation Act of 1907, which under current law would be declared unconstitutional, is and always has been a U.S. citizen subject to the gift tax and estate tax provisions of the Code. This ruling is not applicable for taxable years beginning prior to January 1, 1976, or to estates of decedents dying before that date, except where such individuals exercised a specific right of citizenship. §§20.2001–1, 20.2051–1, 20.2101–1, 20.2106–1, 20.2107–1, 301.7805–1. (Secs. 1, 871, 877, 2001, 2051, 2101, 2106, 2107, 2501, 2511, 7805; '54 Code.)

Rev. Rul. 75–357, 1975–2 C.B. 5.

152.13 Date and time of death; time zone controlling. The date and time of death of a nonresident citizen of the U.S. who died in the foreign country of his domicile is the established day and time in the place of his domicile at the instant of death. Rev. Rul. 66–85 modified.§20.2031–1. (Sec. 2031, '54 Code.)

Rev. Rul. 74–424, 1974–2 C.B. 294.

152.14 Funds in safe-deposit box. Funds of a nonresident alien decedent located in a safe deposit box in a U.S. bank are includible in his gross estate.§81.50. (Sec. 863, '39 Code; Sec. 2105, '54 Code.)

Rev. Rul. 55–143, 1955–1 C.B. 465.

152.15 Funds in stock trading account. Decedent was a nonresident alien not engaged in business in the U.S. Prior to his death, decedent's stockbroker had credited his account with the proceeds of stock sold for him. Several days later, the broker, unaware that the decedent had died earlier that day, issued its check covering the proceeds from the sale and deposited the check in the bank for credit to the account of the decedent. These funds owed to the decedent at the time of his death are not excludable from his gross estate as bank deposits.§20.2105–1. (Sec. 2105, '54 Code.)

Rev. Rul. 65–245, 1965–2 C.B. 379.

152.16 Illegal aliens. An illegal alien who lived in the U.S. for 19 years with the alien's family, purchased a residence, and established strong community ties was domiciled in the U.S. at the date of death, and the estate is subject to tax. §§20.0–1, 20.2101–1. (Secs. 2001, 2101; '54 Code.)

Rev. Rul. 80–209, 1980–2 C.B. 248.

152.17 Life estate under German law. The Tax Court excluded from the decedent's gross estate stocks and bonds held in custodian accounts in New York City. The decedent was a nonresident alien who died in Switzerland in 1945. These assets had been purchased with funds which, under the applicable German law, constituted part of the decedent's pre-deceased husband's estate, and were held by the decedent under an interest corresponding to a life estate with a limited power of invading the corpus. Upon the death of the decedent the assets immediately devolved upon the remainderman pursuant to the husband's will. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Hedwig Zietz, 34 T.C. 351, Acq., 1960–2 C.B. 7.

152.18 Mortgaged real property in New York. Decedent, a nonresident alien, owned real estate in New York City subject to outstanding mortgages. *Held,* under New York law the property alone and not the decedent's estate is liable for the mortgage indebtedness. Accordingly, the value of decedent's equity of redemption in the real estate, and not its fair market value, is includible in the gross estate. (Secs. 812(b), 861(a), '39 Code; Secs. 2051, 2103, 2106, '54 Code.)

Harcourt Johnstone, 19 T.C. 44, Acq., 1953–1 C.B. 5.

152.19 Puerto Rican; resident of Virgin Islands at death. A decedent who acquired his U.S. citizenship solely by virtue of his birth in Puerto Rico and was a resident of the Virgin Islands at his death is considered a nonresident not a citizen.§§20.2208–1, 20.2209–1. (Secs. 2208, 2209; '54 Code.)

Rev. Rul. 74–25, 1974–1 C.B. 284.

152.20 Situs of common trust fund shares. Where trust funds held by a New York trust company under a revocable deed of trust executed by a resident and national of Great Britain are invested by the trustee in participating units of a common trust fund, the situs of the participating units is in the U.S.§81.50. (Sec. 863, '39 Code; Sec. 2105, '54 Code.)

Rev. Rul. 55–163, 1955–1 C.B. 674.

152.21 Stock of Canadian corporation. Shares of stock of a Canadian corporation owned by a decedent who, at the time of death, was a citizen and resident of Canada are not subject to the Federal estate tax, even though the stock transfer offices of the corporation are located in the U.S.§81.50. (Sec. 862, '39 Code; Sec. 2105, '54 Code.)

Rev. Rul. 54–407, 1954–2 C.B. 657.

152.22 United Nations members; diplomatic immunity. An agreement between the U.S. and the United Nations respecting the headquarters of the U.N. provides that certain representatives of member nations and their staffs and certain representatives of specialized agencies and their staffs shall be entitled to the same privileges and immunities accorded to diplomatic envoys accredited to the U.S., that is, that personal property used by him in the conduct of his official mission and reasonably required therefor is not subject to estate tax.§81.13. (Sec. 861, '39 Code; Secs. 2103, 2106, '54 Code.)

Rev. Rul. 187, 1953–2 C.B. 291.

152.23 Visiting alien intending to become citizen. Decedent, a nonresident alien, who never entered the U.S. except as a temporary visitor cannot be considered as domiciled in the U.S., even though he may have formed the intent of establishing a domicile and a substantial portion of his property is in the U.S. and subject to estate tax. (Sec. 2101, '54 Code.)

Rev. Rul. 58–70, 1958–1 C.B. 341.

Notes

(See: Claims against estate; Securities)

Offers in compromise

(See: ADMINISTRATIVE)

Officers and employees of the Service

(See: ADMINISTRATIVE)

Optional valuation

(See: Valuation)

Overassessments

(See: ADMINISTRATIVE: Refunds and credits)

Overpayments

(See: ADMINISTRATIVE)

Payment of tax

(See: ADMINISTRATIVE)

Penalties

(See: ADMINISTRATIVE)

Period of limitation

(See: ADMINISTRATIVE: Limitation period)

Personal liability

(See: ADMINISTRATIVE: Liability for tax)

Powers of appointment

154.1 Contingent power of decedent. If the transferor can change the trustee at will, naming himself as the new trustee, it can be a power to alter, amend or revoke, if the trustee can amend the trust in conjunction with adult beneficiaries. On the other hand, if the trustee can be replaced only in the event of death or disqualification and the transferor dies before any replacement becomes necessary, his power is not one which will result in taxability.§81.20. (Sec. 811(d), '39 Code; Sec. 2038, '54 Code.)

Rev. Rul. 55–393, 1955–1 C.B. 448.

154.2 Creation of another power; Wisconsin. A decedent who had a special power of appointment over trust property exercised it by will, creating in her husband a second special power of appointment with respect to the same property. The applicable Wisconsin rule against perpetuities measures the perpetuities period with respect to a trust created by the exercise of a special power from the time the power was created. The value of the property was not includible in decedent's estate under section 2041(a)(3). (Sec. 2041, '54 Code.)

Mary Margaret Murphy, 71 T.C. 671, Acq., 1979–2 C.B. 2.

154.3 Credit for tax on prior transfers. There is a transfer to a decedent-transferee of a beneficial interest in property for purposes of the credit for tax on prior transfers, if the property interest meets the requirements of a general power of appointment at the time of the transferor's death.§§20.2013–1, 20.2041–1. (Secs. 2013, 2041; '54 Code.)

Rev. Rul. 66–38, 1966–1 C.B. 212.

154.4 Default of exercise of power; marital deduction. The marital deduction allowable with respect to life estates coupled with a general power of appointment is not lost merely because the donor-spouse also provides for takers in default of exercise of the power and for the payment of the entire corpus to his spouse under certain conditions.§81.47a. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.

Rev. Rul. 55–394, 1955–1 C.B. 458.

154.5 Disposal of property; power of devise. A devise, expressing neither a fee nor life estate, coupled with the power to encumber and to dispose of the property at will, without authority of any court, with a further power to distribute remainder by will to certain named beneficiaries, under State law generally creates in the devisee a general power of appointment.§81.24. (Sec. 811(f), '39 Code; Sec. 2041, '54 Code.)

Rev. Rul. 243, 1953–2 C.B. 267.

154.6 Effect of State trial court decree. Decedent created a revocable trust, giving his wife a general power of appointment. While her husband was still alive, the wife attempted to reduce the general power to a special power in order to prevent inclusion of the trust corpus in her own estate. After decedent's death, the Commissioner disallowed the marital deduction on the ground that the wife had only a special power. However, the trustee filed a petition with a State trial court of general jurisdiction seeking a determination of the effectiveness of the wife's partial release, and the State court ruled that the attempted release was a nullity. *Held,* the State court's decision was binding on the Commissioner in the estate tax proceedings.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Bosch, Second National Bank of New Haven, 387 U.S. 456, Ct. D. 1915, 1967–2 C.B. 337.

154.7 Exercise; compromise agreement approved by Probate Court. By trust indentures dated 1900, decedent was given general testamentary powers of appointment. He purported to exercise such powers in his will in a manner contrary to an enforceable agreement with his former wife. Both the validity of decedent's act and his possession of the powers at the time were questioned in the contest of the will, and a compromise agreement ensued providing that the attempt to exercise the powers should be given no effect and that the trust assets should be distributed as in default of appointment. *Held,* the action of the Probate Court in admitting the will to probate to be administered according to the terms of the compromise agreement had the effect of a judgment in favor of the claims commanding the agreement. The trust assets were not, therefore, includible in the gross estate. (Sec. 2041, '54 Code.)

Sedgwick Minot, 45 T.C. 578, Acq., 1966–2 C.B. 6.

154.8 Exercise; distributions by trustees. Under the terms of her husband's will, decedent received the income from a marital deduction trust for life and had testamentary power of appointment over the assets remaining in the trust at her death. Under a discretionary power to use trust principal to meet decedent's reasonable needs, the trustees made several distributions of cash and stock from trust principal during decedent's life to her descendants. *Held,* the value of the assets distributed from the trust during decedent's life was not includible in decedent's gross estate. (Sec. 2041, '54 Code.)

Betty Durham Council, 65 T.C. 594, Acq., 1976–2 C.B. 1.

154.9 Exercise; favor of issue or surviving spouse. Decedents were beneficiaries of a trust created by their aunt in 1921. The trust instrument provided three alternatives as to how the decedents could dispose of their interests in the property: (1) a specific power to appoint such property to his or her spouse or issue; (2) if the first provision was not applicable, the property was to be turned over "to such person or trustees as such nephew or niece shall have designated by last will and testament..."; and (3) in the event neither of the preceding alternatives was applicable, the property was to go to the surviving issue or next of kin of such deceased nephew or niece. The will of both decedents contained provisions which used language appointing the property in accordance with the first alternative. *Held,* the power was a limited rather than a general power of appointment where it was exercised in favor of their issue or surviving spouse, and the property subject to such power was not includible in their gross estates. (Sec. 811(f), '39 Code; Sec. 2041, '54 Code.)

Laura Brown Chisholm, 26 T.C. 253, Acq., 1956–2 C.B. 5.

154.10 Exercise; favor of issue; partial release. Decedent was income beneficiary under a trust created by her husband in 1927 under which she had the power to alter or amend the trust and to change the beneficiaries. Decedent exercised this power in 1935 and 1946 solely in favor of issue and spouses of issue and prior to November 1, 1951, released her power to change the trust beneficiaries. *Held,* decedent's actions were the equivalent of a partial release of a general power of appointment within the provisions of section 2041(a)(1)(B)(i) of the Code followed by the exercise of a special power of appointment and, therefore, the value of the trust was excludable from decedent's gross estate. (Sec. 2041, '54 Code.)

Anna J. Lombard, 46 T.C. 310, Acq., 1967–1 C.B. 2.

154.11 Exercise; trust created by devisee and remaindermen. Where the devisee joins with the contingent remaindermen in the creation of a trust, to which is conveyed property over which the devisee possesses a power of disposition, he will not have exercised a general power of appointment.§81.24. (Sec. 811(f), '39 Code; Sec. 2041, '54 Code.)

Rev. Rul. 54–271, 1954–2 C.B. 294.

154.12 General; appointment of portion of property. The power given by decedent to his widow to appoint a portion of the property passing from the decedent in trust for the benefit of the widow does not in itself create a separate trust in respect of the portion of the trust corpus over which the widow has a power of appointment so as to qualify the value of the entire trust passing from the decedent, or any portion thereof, for the marital deduction.§81.47(a). (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 54–20, 1954–1 C.B. 195.

154.13 General; ascertainable standard. The power of a decedent who was the income beneficiary and sole trustee of a trust to apply as much of the trust principal as necessary for such trustee-beneficiary's maintenance and medical care, which power was limited by an ascertainable standard under local law, was limited by an ascertainable standard relating to maintenance and health within the meaning of section 2041(b)(1)(A) and was not a general power of appointment. §20.2041–1. (Sec. 2041, '54 Code.)

Rev. Rul. 78–398, 1978–2 C.B. 237.

154.14 General; conjunctive control of assets. One-third of the value of a trust created by three siblings, each of whom named an adult child as one of three trustees who together had complete discretionary power over the assets of the trust and individually had the right to name a relative as successor, is includible in a decedent-trustee's estate as property subject to a general power of appointment. Amplified by Rev. Rul. 77-158. §20.2041-3. (Sec. 2041, '54 Code.)

Rev. Rul. 76-503, 1976-2 C.B. 275.

154.15 General; conjunctive control of assets. One third of the value of a trust created by three siblings, each of whom named an adult child as one of the three trustees, who through majority vote, had complete discretionary power over the assets of the trust and individually had the right to name a relative as successor, is includible in a decedent-trustee's estate as property subject to a general power of appointment. Rev. Rul. 76-503 amplified.§20.2041-3. (Sec. 2041, '54 Code.)

Rev. Rul. 77-158, 1977-1 C.B. 147.

154.16 General; inter vivos trust; minor decedent-beneficiary. A minor decedent-beneficiary of an inter vivos trust created by a gift of a present interest, who died without having exercised the testamentary power of appointment granted under the trust possessed a general power of appointment at the time of death even though under local law the minor was legally incompetent to execute a will at the time of death, and the value of the trust assets at the date of death is includible in the minor's gross estate. §§20.2041-3, 25.2503-4. (Secs. 2041, 2503; '54 Code.)

Rev. Rul. 75-351, 1975-2 C.B. 368.

154.17 General; jointly held; substantial adverse interest. A decedent who was the life beneficiary and a trustee of a testamentary trust could, with the consent of another trustee, one of the decendent's children, direct the trustees to distribute the trust property to anyone, including the decedent, and could direct by will that the remainder be paid to any of the decendent's children, who otherwise would receive it equally. The child's interest is not a substantial adverse interest under reg. 20.2041-3(c); the decedent consequently possessed at death a general power of appointment, of which the child was not a coholder, and the total value of the trust property is includible in the decedent's gross estate. §20.2041-3. (Sec. 2041, '54 Code.)

Rev. Rul. 79-63, 1979-1 C.B. 302.

154.18 General; legal life estate; beneficiary deceased. The value of the remaining property held by a deceased wife who, under will, had absolute power of disposition, other than the power to exercise testamentary control over any unconsumed portion, is includible in her gross estate.§20.2041-1. (Sec. 2041, '54 Code.)

Rev. Rul. 69-342, 1969-1 C.B. 221.

154.19 General; not limited by ascertainable standard. The decedent who was granted a life estate in a trust with the power to invade corpus as desired to continue an accustomed standard of living, which power under the applicable state law is not construed to impose an objective limitation, possessed a power that was not limited by an ascertainable standard relating to health, education, support or maintenance and consequently possessed at death a general power of appointment.§20.2041-1. (Sec. 2041, '54 Code.)

Rev. Rul. 77-60, 1977-1 C.B. 282.

154.20 General; not limited by ascertainable standard. The life beneficiary of a testamentary trust the corpus of which could be invaded for the beneficiary's "proper comfort and welfare," a power not limited under the applicable New Jersey law to an ascertainable standard relating to health, education, support, or maintenance, possessed at death a general power of appointment.§20.2041-1. (Sec. 2041, '54 Code.)

Rev. Rul. 77-194, 1977-1 C.B. 283.

154.21 General; not limited by ascertainable standard. For purposes of section 2041, the income beneficiary of a trust governed by Massachusetts law possesses a general power of appointment when the income beneficiary can invade the trust corpus for the beneficiary's "maintenance, comfort, and happiness." The Service will not follow the ***Brantingham*** decision. §20.2041-1. (Sec. 2041, '54 Code.)

Rev. Rul. 82-63, 1982-1 C.B. 135.

154.22 General; partial exercise. Where the inclusion in the gross estate of a deceased donee of a general power of appointment of the property subject to the power is dependent upon an exercise of the power by the donee, and the donee partially exercises the power by appropriating a part of the property to her own use, the property unaffected by the exercise is not includible in the donee's gross estate.§81.24. (Sec. 811(f), '39 Code; Sec. 2041, '54 Code.)

Rev. Rul. 54-59, 1954-1 C.B. 183.

154.23 General; survivor annuitant; qualified, noncontributory retirement plan. The present value of guaranteed survivor annuity payments remaining payable at the survivor's death under a qualified noncontributory retirement plan under which the survivor has the unrestricted power to select the beneficiary of the remaining payments is includible in the survivor's gross estate under section 2041(a)(2). The exclusion provisions of section 2039(c) do not apply. §§20.2039-2, 20.2041-1. (Secs. 2039, 2041; '54 Code.)

Rev. Rul. 79-190, 1979-1 C.B. 299.

154.24 Incompetent beneficiary. The mental incompetence of a lifetime income beneficiary of a testamentary trust to exercise a power of appointment created in 1950 did not prevent such power from being general and the value of the principal of such trusts is includible in said beneficiary's gross estate upon her death. Also, the value of the trust at the date of its creation would qualify for the marital deduction despite the decedent's incompetence. (Secs. 2041, 2056; '54 Code.)

Rev. Rul. 55-518, 1955-2 C.B. 384.

154.25 Incompetent wife-beneficiary. The value of assets in a trust created by the husband's will to provide lifetime income for his wife who could bequeath the trust principal by her will, qualifies for the marital deduction and is includible in the wife's gross estate even though she was mentally ill from the time of her husband's death to the time of her death and, under state law, legally incapable of exercising her testamentary power of appointment. §§20.2041-1, 20.2056(b)-5. (Secs. 2041, 2056; '54 Code.)

Rev. Rul. 75-350, 1975-2 C.B. 366.

154.26 Incompetent wife-beneficiary. Decedent was granted, under the terms of her husband's will, a general power of appointment over the remainder of his estate. She was later adjudged legally incompetent, and guardians of her person and estate and a new administratrix of her husband's estate were appointed. *Held,* under Texas law at the time of decedent's death, decedent was deprived of any power she previously had, and her guardians possessed a power limited by an ascertainable standard within the meaning of section 2041(b)(1). (Sec. 2041, '54 Code.)

Anna Lora Gilchrist, 69 T.C. 5, Nonacq., 1978-2 C.B. 3.

154.27 Insurance proceeds; marital deduction. A surviving spouse possesses a power of appointment where an insurance policy contains a provision that proceeds are to be retained by the insurance company and interest thereon paid monthly to the surviving spouse for life and the right exercisable by her alone and in all events to direct the company to pay the entire proceeds at her death to her executors, administrators or assigns. Accordingly, the proceeds of the policy qualify for the marital deduction.§81.47a. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 55-277, 1955-1 C.B. 456.

154.28 Lapsed annual right; insurance proceeds. Decedent's spouse, the owner of a life insurance policy, selected a settlement option under which (1) the decedent was to receive the income from the insurance proceeds for life, (2) the decedent was to have an annual noncumulative right to withdraw 5% of the face value of the policy, and (3) the remaining insurance proceeds were to be paid to the children of decedent and spouse. Decedent annually waived the right to withdraw. The property subject to the decedent's lapsed annual right to withdraw insurance proceeds is not includible in decedent's gross estate. The value of the decedent's right to withdraw insurance proceeds at death, however, is includible. §§20.2036-1, 20.2041-3. (Secs. 2036, 2041; '54 Code.)

Rev. Rul. 79-373, 1979-2 C.B. 331.

154.29 Lapsed power. Decedent, lifetime beneficiary of a trust, did not exercise her noncumulative right to withdraw the income from the trust each year. The failure to exercise the right constituted a lapse of a power of appointment. The five-percent limitation on the lapsed power exclusion is to be based on the income the decedent could have withdrawn rather than on the corpus of the trust.§20.2041-3. (Sec. 2041. '54 Code.)

Rev. Rul. 66-87, 1966-1 C.B. 217.

154.30 Life estate. Decedent's father died testate shortly after the preparation, but before execution, of a new will. Without knowledge of the contents of either will, the family agreed to carry out the provisions of the unexecuted draft. Thus decedent's share of the estate was transferred to trust with income payable for life and a limited power to appointment. *Held,* decedent inherited a life estate with a limited power of appointment; she made no transfers of property to the trusts; and no part of the value of the trusts is includible in her gross estate. (Sec. 811(c), 811(d), '39 Code; Secs. 2035, 2038, '54 Code.)

Elizabeth W. Vease, 35 T.C. 1184, Nonacq., 1962-1 C.B. 5.

154.31 Life estate; insurance fund. Insurance proceeds retained by an insurance company during the life of a surviving spouse who had a life estate in the fund and the power to appoint the remainder for the health, education, support and maintenance of adult children, whom the surviving spouse had no legal duty to support, are not includible in the gross estate of the surviving spouse under section 2041(a)(2). §20.2041-1. (Sec. 2041, '54 Code.)

Rev. Rul. 79-154, 1979-1 C.B. 301.

154.32 Life estate; Maryland. A testamentary trust providing that a decedent's spouse will receive the income of a trust for life and may appoint the corpus by will is not a general power of appointment under Maryland law, and the value of the trust corpus is neither allowed to the decedent's estate as a marital deduction under section 2056 nor includible in the spouse's gross estate under section 2041. §§20.2041-1, 20.2056(b)-5. (Secs. 2041, 2056; '54 Code.)

Rev. Rul. 76-502, 1976-2 C.B. 273.

154.33 Life estate; trust; surviving spouse with power of appointment. A surviving spouse who was granted a life estate, in trust, coupled with the power to appoint the trust corpus, subject to the consent of the remaindermen or the trustee, possesses a general power of appointment under section 2041 over the trust assets, the value of which is includible in the gross estate of the spouse, but is not allowable as a marital deduction to the decedent's estate under section 2056. §§20.2041-3, 20.2056(b)-5. (Secs. 2041, 2056; '54 Code.)

Rev. Rul. 82-156, 1982-2 C.B. 216.

154.34 Power over trust corpus. Decedent's husband left his one-half interest in community property to his wife in trust for life naming his son as trustee-remainderman. The will provided that the trustee would have sole and exclusive right to manage the property and if income was insufficient to comfortably and adequately support decedent with all comfort and necessities, he was to provide for her from the corpus. *Held,* decedent did not hold a power of invasion or appointment over the trust corpus at the time of her death. Thus, the Court need not determine whether the power constituted a general power of appointment under section 2041 of the Code. The intention of decedent's husband, determined from the will's language and supported by extrinsic evidence under applicable Texas law, was to prevent others from taking advantage of decedent by granting the trustee the power of determining when the corpus should be invaded and further, he justifiably believed the income would be sufficient to support the decedent, if not wasted. (Sec. 2041, '54 Code.)

Mary Joyce Cox, 59 T.C. 825, Acq., 1973-2 C.B. 1.

154.35 Power over trust corpus. An independent trustee's power to invade trust principal for the benefit of an income beneficiary in the trustee's sole and unfettered discretion, with directions to liberally exercise its discretionary power of invasion, will not be considered a general power of appointment. §20.2041-1. (Sec. 2041, '54 Code.)

Rev. Rul. 76-368, 1976-2 C.B. 271.

154.36 Power relinquished; portion of property left in trust. The decedent, life income beneficiary of a trust, had power to alter or modify the trust with the consent of the trustee as well as a power of appointment exercisable by will. He attempted to revoke the trust but did not receive the trustee's consent. Subsequently, under a compromise agreement, one-half of the trust corpus was paid to the decedent and he relinquished his powers under the trust. *Held,* the attempted revocation of the old trust was ineffective and the compromise agreement did not constitute a transfer to a new trust. The remaining trust corpus was not includible in the decedent's estate. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Alan R. Denzer, 29 T.C. 237, Acq., 1958-2 C.B. 5.

154.37 Release of general power after shift in value of trust assets. Acquiescence in a recapitalization of closely held stock in a trust is a transfer by the trust beneficiary subject to the gift tax, where the recapitalization results in a shift in the beneficiary's interest by decreasing the value of the remainder interest over which the beneficiary has a general power of appointment. §§20.2036-1, 20.2041-3, 25.2514-1. (Secs. 2036, 2041, 2511, 2514; '54 Code.)

Rev. Rul. 86-39, 1986-11 I.R.B. 23.

154.38 Residuary testamentary clause. A trust created in 1923 gave decedent a general power of appointment conditioned upon the death of B and C before A, decedent's sisters and brother. Decedent predeceased A, B, and C, and even though her general power over corpus had not come into being, the condition in the trust instrument did not restrict the exercise of the power, it merely qualified the property interest subject thereto. She was found to have exercised this power and the property is includible in her gross estate.§81.24. (Sec. 811(f), '39 Code; Sec. 2041, '54 Code.)

Rev. Rul. 55-486, 1955-2 C.B. 605.

154.39 Restricted; marital deduction. Where the terms of a trust do not confer upon the decedent's surviving spouse the power, exercisable by her alone and in all events, to appoint the entire corpus or a specific portion thereof free of trust and if others are named to take so much of the property as may remain upon her death, the interest passing to such spouse is a terminable one and does not qualify for the marital deduction. §81.47a. (Sec. 812(e), '39 Code; Sec. 2056, '54 Code.)

Rev. Rul. 55-395, 1955-1 C.B. 458.

154.40 Restricted; marital deduction; New Jersey. The bequest of a residuary estate to a surviving spouse for the spouse's unrestricted use during life with any remainder to the son and his heirs, under New Jersey law, creates a life estate with a power of appointment exercisable by the spouse in all events so that the interest passing to the spouse is not a terminable interest and qualifies for the marital deduction. §20.2056(b)-5. (Sec. 2056, '54 Code.)

Walter L. Edwards, 58 T.C. 348, Acq., 1978-2 C.B. 2.

154.41 Retained life estate; transfer in trust. The decedent executed a trust agreement in 1919 wherein she reserved to herself the income from the trust for life and the right to appoint by will the distribution of the trust corpus after her death. The trust was irrevocable under local law. She irrevocably released this power of appointment in 1942. *Held,* the transfer in trust occurred in 1919 when the trust was created rather than at the time the general testamentary power of appointment was released and, therefore, the trust corpus is excludable from the grantor's gross estate as a transfer made prior to March 4, 1931. (Sec. 2036, '54 Code.)

Ellie G. Canfield, 34 T.C. 978, Nonacq., 1963-1 C.B. 5.

154.42 Revocable; unexercised; date of creation. Decedent, at her death in 1956, possessed unexercised general powers of appointment over insurance proceeds provided for in settlement agreements executed in 1938 with respect to certain life insurance policies under which her son was the insured. The son retained the right to revoke or change the beneficiaries and methods of payment, but died in 1945 without exercising this right. *Held,* the powers of appointment were created the date the settlement agreements were executed, i.e. before October 21, 1942, rather than the date of the son's death, and the insurance proceeds were not includible in decedent's gross estate. (Sec. 2041, '54 Code.)

Ernestina Rosenthal, 34 T.C. 144, Acq., 1963-1 C.B. 4.

154.43 Right under the Uniform Gifts to Minors Act. A decedebt who had the right, pursuant to the Uniform Gifts to Minors Act, to petition a court to order the custodian of property held under the Act for the decedent's minor child to pay certain custodial property to the child for the child's benefit did not thereby possess a general power of appointment over the custodial property.§20.2041-1. (Sec. 2041, '54 Code.)

Rev. Rul. 77-460, 1977-2 C.B. 323.

154.44 Trustee-beneficiary of trust. Where a trustee, who is also a beneficiary of a trust, is prevented by a State statute from participating in a decision to distribute corpus to himself, his estate, his creditors, or the creditors of his estate, no part of the trust property is includible in his gross estate by reason of the fact that the trust instrument provides that the trustees may distribute corpus to the beneficiary.§81.24. (Sec. 811(f), '39 Code; Sec. 2041, '54 Code.)

Rev. Rul. 54-153, 1954-1 C.B. 185.

154.45 Uncashed social security benefit checks. The value of a decedent's interest in uncashed social security benefit checks, jointly payable to him and his surviving wife, is not includible in his gross estate. §§20.2033-1, 20.2041-1. (Secs. 2033, 2041; '54 Code.)

Rev. Rul. 75-145, 1975-1 C.B. 298.

154.46 Unexercised. The decedent transferred in trust, securities and life insurance policies, retaining certain powers. He agreed not to change terms of trust without the beneficiary's consent. In 1943, without the beneficiary's consent, he surrendered all retained powers, except power to appoint a successor to trustee who had resigned. The decedent died without exercising power. *Held,* the release of the retained powers was effective and the unexercised power to appoint a co-trustee was not a power to alter, amend, or revoke, so as to require inclusion of trust corpus in the decedent's gross estate. (Sec. 811(d), '39 Code; Sec. 2038, '54 Code.)

Newcomb Carlton, 34 T.C. 988, Nonacq., 1963-1 C.B. 5.

154.47 Unexercised right to take against will; deceased widow. A widow whose husband failed to provide for her in his will and who could have elected within six months from the date the Letters Testamentary were granted to take a share of his estate against the provisions of the will, but died during this period without making the election, did not possess either an interest in property or a general power of appointment, the value of which is includible at her death in her gross estate.§§20.2033-1, 20.2041-1. (Secs. 2033, 2041; '54 Code.)

Rev. Rul. 74-492, 1974-2 C.B. 298.

Powers of attorney

(See: ADMINISTRATIVE: Attorneys and agents)

Practice before the Servi

(See: ADMINISTRATIVE: Attorneys and agents)

Prior transfers

(See: Credits against tax)

Property subject to claims

(See: Claims against estate)

Publicity of information

(See: ADMINISTRATIVE)

Rates of tax

(See: ADMINISTRATIVE)

Records

(See: ADMINISTRATIVE: Books and records)

Refunds and credits
(See: Credits against tax; ADMINISTRATIVE)

Remainder interests
(See: Credits against tax; Interest in property; Transfers)

Reproduction of forms and returns
(See: ADMINISTRATIVE: Forms)

Residence
(See: Domicile)

Residents

158.1 Alien employed in U.S. by international organization; G–4 visa. An employee of an international organization who entered the U.S. on a G–4 visa and intended to remain in the U.S. indefinitely, which intent persisted until death, was a resident of the U.S. Rev. Rul. 74–364 revoked. §20.2001–1. (Sec. 2001, '54 Code.)

Rev. Rul. 80–363, 1980–2 C.B. 249.

158.2 Canadian timber license. A Canadian timber license that is renewable from year to year constitutes personal property situated outside the U.S. rather than real property. The value of such license, determined under the laws of the U.S., is includible in determining the gross estate of a decedent, who is a resident citizen of the U.S.§81.13. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 65, 1953–1 C.B. 391.

Retained interests
(See: Interests in property; Transfers)

Returns
(See: ADMINISTRATIVE)

Reversionary interest
(See: Interests in property; Transfers)

Rulings
(See: ADMINISTRATIVE)

Securities

160.1 Alternate valuation; dividends payable after death. Dividends declared prior to a decedent's death payable after date of death may not be added to the ex-dividend selling prices of stock for gross estate purposes under the alternate valuation provisions, but must be added to the ex-dividend selling prices at date of death for valuing the gross estate at date of death only. Where the alternate valuation method is used, stock valued at its ex-dividend selling price at the alternate valuation date must be increased by the amount of any dividends declared during the alternate valuation period.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 60–124, 1960–1 C.B. 368.

160.2 Alternate valuation; rights and dividends. The valuation to be used where the executors of an estate elect the alternate valuation method in certain factual situations involving stock rights, stock dividends, insurance proceeds, and interest bearing obligations received or disposed of within the year following the decedent's death is set forth.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 58–576, 1958–2 C.B. 625.

160.3 Alternate valuation; sale during one-year period. The actual selling price of stock sold in arm's length transactions during the one-year period following the date of a decedent's death should be used in the valuation of such stock by an executor electing to use the alternate valuation method.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 70–512, 1970–2 C.B. 192.

160.4 Gift from community estate. The decedent made a gift of shares of stock to one of her daughters. The stock was part of the community estate of the decedent and her deceased husband and in which she had been conveyed a life estate with power of disposition under her husband's will. *Held,* because of the good health and prior history of gifts made by the decedent, the gift was not made in contemplation of death and, therefore, was not includible in her gross estate. (Sec. 2035, '54 Code.)

Lela Berry Vardell, 35 T.C. 50, Acq., 1961–1 C.B. 4.

160.5 Husband and wife; joint names. The wife of the decedent agreed to and did assist him in his various business activities throughout their married life. In order to effectuate an oral agreement that whatever was earned or accumulated with the joint efforts of his wife subsequent to their marriage was to belong to them jointly, the decedent transferred individually held securities to and purchased securities in their joint names. *Held,* the purchases and transfers were for an adequate consideration and the decedent did not make gifts to his wife when he transferred securities to and purchased securities in their joint names. (Sec. 811, '39 Code; Sec. 2033, '54 Code.)

Charles A. Trafton, 27 T.C. 610, Acq., 1957–2 C.B. 7.

160.6 Land contracts; Michigan. Contractual claims of the holder of a "land contract" in Michigan are valued, for Federal estate tax purposes, in the same manner as notes, since the transferor of land conveyed by use of such a contract is entitled to money payments and retains, in essence, only a security interest in the land.§20.2031–4. (Sec. 2031, '54 Code.)

Rev. Rul. 66–342, 1966–2 C.B. 431.

160.7 Mean selling price. Listed securities and Treasury bonds must be valued and reported in dollar fractions smaller than eighths or thirty-seconds, respectively, if the mean selling price on the applicable valuation date results in a smaller fraction.§§20.2031–2, 25.2512–2. (Secs. 2031, 2512; '54 Code.)

Rev. Rul. 68–272, 1968–1 C.B. 394.

160.8 Mortgages and mortgage participation certificates. Where it is contended that the actual value of mortgages and mortgage participation certificates are less than their face value, the burden of proof is upon the estate to establish the lower value of such assets. All available financial data as well as all relevant factors affecting the fair market value must be submitted to the Service for consideration in determining the value of such assets for purposes of section 2031 of the Code. E.T. 8 superseded.§20.2031–4. (Sec. 2031, '54 Code.)

Rev. Rul. 67–276, 1967–2 C.B. 321.

160.9 State public housing agency bonds. Bonds that are issued by a state public housing agency for a low-income housing project are included in the gross estate of the deceased owner of the bonds, even though the U.S. Housing Act of 1937 exempts them from all taxation. §20.2033–1. (Secs. 1001, 2033; '54 Code.)

Rev. Rul. 81–63, 1981–1 C.B. 455.

160.10 Stock; contract to purchase. Pursuant to instructions from decedent, a nonresident alien, brokers in New York entered into contracts on September 19, 1945, the day before his death, for the purchase of ten blocks of stock in the regular way on the New York Stock Exchange. Payment and delivery were to be and were made on September 21. *Held,* the value of the stock is not includible in decedent's gross estate. Under New York law property rights in fungible property are not acquired until specific units of such property are expressly appropriated to the contract. The contracts to buy had no value on the date of death because they required payment of money in excess of the value of the stock on that day. (Secs. 811(a), 861, 862, '39 Code; Secs. 2033, 2103, 2106, '54 Code.)

George McNaught Lockie, 21 T.C. 64, Acq., 1954–1 C.B. 5.

160.11 Stock; corporate option to repurchase. Where a stockholder acquires stock from a corporation subject to an option reserved to the corporation in the articles of organization to repurchase the stock at a specific price before any sale or transfer, including any transfer at the death of the stockholder, can be validly made to others, the option price, in the absence of other material circumstances, will be accepted as the fair market value at the date of death, especially where the option is exercised by the corporation.§§81.10(c), 81.13. (Secs. 811(a), 811(k), '39 Code; Secs. 2033, 2037, '54 Code.)

Rev. Rul. 54–76, 1954–1 C.B. 194.

160.12 Stock; pledged to pay tax. Shares of stock included in decedent's estate pledged by the executor to secure funds for the payment of estate tax are divested of the special lien for estate taxes to the extent that the funds are so used.§301.6324–1. (Sec. 6324, '54 Code.)

Rev. Rul. 56–529, 1956–2 C.B. 948.

160.13 Stock and life insurance policies; transferred in trust. The decedent was assigned certain life insurance policies by her husband. On June 4, 1932, decedent created an irrevocable trust and transferred to it all the insurance policies along with separate stock powers covering securities. The decedent died on March 11, 1954. *Held,* the value of the insurance policies and the value of the securities required to produce income sufficient to pay premiums thereon, comprising part of the Corpus of the trust created on June 4, 1932, are not includible in the decedent's gross estate. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Lena R. Arents, 34 T.C. 274, Nonacq., 1961–2 C.B. 6.

160.14 Stock redemption agreement; installment payments during lifetime. Under terms of a contract, decedent sold her stock in a family-owned corporation to the corporation in return for payment of $6,000 plus monthly payments of $1,000 to continue for 12 years or until her death, whichever occurred first. When she died, the balance of the purchase price was not includible in the decedent's gross estate, since she retained neither possession, enjoyment, nor the right to income from the transferred stock. (Sec. 2036, '54 Code.)

Ruby Louise Cain, 37 T.C. 185, Acq., 1962–2 C.B. 4.

160.15 Stock redemption to pay death taxes. In a redemption of stock to pay death taxes, the amount of funeral and administration expenses referred to in section 303 includes those expenses paid by an estate prior to the enactment of the 1954 Code provided such expenses are otherwise deductible under section 2053. It is not material whether such allowable expenses were deducted on income or estate tax returns filed under the 1939 Code. (Secs. 303, 642, 2053; '54 Code.)

Rev. Rul. 56–449, 1956–2 C.B. 180.

160.16 Stock transferred from decedent's name to executor-beneficiary; alternate valuation period. The transfer of corporate stocks during the alternate valuation period from the decedent's name to the name of the sole executor-beneficiary, prior to a decree of distribution and payment of the expenses of administration, constitutes a distribution within the meaning of section 2032 of the Code.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 71–5, 1971–1 C.B. 270.

160.17 Stock transferred in trust; retained power. Prior to death, a taxpayer transferred nonvoting closely held corporate stock to a trust, retained the voting stock of the corporation, and retained control over the disposition of the nonvoting stock. The taxpayer did not retain the right to determine the income from the nonvoting stock or the persons who would enjoy the income therefrom, and the value of the nonvoting stock is not includible in the gross estate of the decedent. Rev. Rul. 67–54 revoked. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 81–15, 1981–1 C.B. 457.

160.18 Stock transferred in trust; retained power. A grantor's retention of voting, disposition and investment control of stock transferred to an irrevocable inter vivos trust was not a retention of enjoyment of the transferred assets contemplated by section 2036(a) of the Code and the stock is not includible in his gross estate.§20.2036–1. (Sec. 2036, '54 Code.)

Byrum, 408 U.S. 125, Ct. D. 1954, 1972–2 C.B. 518.

160.19 Stock transferred in trust; retained power. In 1948, decedent transferred his sixty percent interest in a closely held corporation, of which he remained a director and chief executive officer until his death in 1967, to an irrevocable inter vivos trust, of which he was one of three trustees with broad management powers. *Held*, decedent did not retain enjoyment of the stock within the meaning of section 2036(a)(1) or the right to designate the persons who would enjoy the stock or the income therefrom within the meaning of section 2036(a)(2), and the value of such stock was not includible in decedent's gross estate. (Sec. 2036, '54 Code.)

Charles Gilman, 65 T.C. 296, Nonacq., 1978–2 C.B. 3.

160.20 Subject to agreement for purchase upon death. The decedent, facing death from cancer, and his two brothers owned stock in a corporation in almost equal shares. In order to insure continuity of family ownership, they executed an agreement with the corporation that, upon the death of any of them, the corporation would buy his interest for $200,000. This was done and the stock of the decedent was valued in the estate tax return at $200,000. *Held*, the stock was burdened with terms of the agreement, which was arrived at by arms-length negotiation, and was properly returned at a value of $200,000 rather than the fair market value of $257,910.97. (Sec. 811, '39 Code; Sec. 2031, '54 Code.)

Orville B. Littick, 31 T.C. 181, Acq., 1959–2 C.B. 5.

160.21 Treasury bonds; redeemed to pay tax. Procedures are provided for using certain marketable interest-bearing U.S. Treasury bonds in payment of Federal estate tax pursuant to instructions issued by the Bureau of the Public Debt. Rev. Rul. 54–113 superseded and Rev. Rul. 156 superseded in part.§§20.6151–1, 301.6155–1. (Sec. 601.104, S.P.R.; Secs. 6151, 6155, '54 Code.)

Rev. Proc. 69–18, 1969–2 C.B. 300.

160.22 Treasury bonds; redeemed to pay tax. Under section 2031, the value of the decedent's Treasury bonds that could have been applied toward the portion of the federal estate tax that was deferred under section 6166 is their par value. §§20.2031–2, 20.6161–1, 20.6163–1, 20.6166–1, 20.6166A–1. (Secs. 2031, 6161, 6163, 6166, 6166A; '54 Code.)

Rev. Rul. 81–228, 1981–2 C.B. 171.

160.23 Treasury bonds; redeemed to pay tax; valuation. The value or fair market value of certain marketable U.S. Treasury bonds owned by a decedent at death, that could be redeemed at the option of the representatives of his estate at par value for paying Federal estate taxes, is the par value thereof or the mean between their highest and lowest quoted selling price at the time of his death (and accrued interest to the date of death), whichever is higher. Except in the case of redemption by substitution, the effective date described in Rev. Proc. 69–18 shall be considered the date the payment is made for purposes of section 6601(a) of the Code. Rev. Rul. 156 superseded in part.§§20.2031–1, 301.6601–1. (Secs. 2031, 6601; '54 Code.)

Rev. Rul. 69–489, 1969–2 C.B. 172.

160.24 Treasury bonds; redeemed to pay tax; valuation. The extent to which marketable U.S. Treasury bonds, owned by the decedent at death, may be redeemed and applied at par in payment of estate taxes will be determined at a redemption date designated by the estate representative, who may choose a date on which no interest is accrued to use the maximum amount of bonds, and the bonds will be valued under the provisions of Rev. Rul. 69–489. §20.2031–1. (Sec. 2031, '54 Code.)

Rev. Rul. 76–312, 1976–2 C.B. 262.

160.25 U.S. savings bonds. The estate and gift tax status of United States savings bonds that are purchased wholly or partly by an individual and registered in several authorized forms is restated. Mim. 5302 superseded.§§ 20.2033–1, 20.2035–1, 20.2040–1, 25.2511–1. (Secs. 2033, 2035, 2040, 2511; '54 Code.)

Rev. Rul. 68–269, 1968–1 C.B. 399.

160.26 U.S. savings bonds; interest. Decedent owned U.S. Series G savings bonds, interest payable semi-annually beginning six months after issue, but no interest payable after the last interest payment date if bonds redeemed before maturity. Upon the death of the holder, a portion of the bonds was redeemed by the executor of the estate before the next interest payment date and no interest was received on those bonds. *Held*, at the date of death, between interest payment dates, the decedent had no right to any interest on the bonds and no interest thereon passed to others by reason of his death. Thus, no amount is to be included in the gross estate as accrued interest. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Willis L. King, Jr., 18 T.C. 414, Nonacq. withdrawn and Acq. substituted, 1953–1 C.B. 5.

160.27 U.S. savings bonds; Series G and K. The par value (principal amount) of U.S. savings bonds of Series G or K owned by a decedent at the time of his death constitutes the value at which the bonds are includible in his gross estate. Where the owner of such bonds dies between interest payment dates, no amount is includible in his gross estate as accrued interest from the last interest payment date to the date of death.§§81.10, 81.13. (Sec. 811, '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 55–301, 1955–1 C.B. 442.

160.28 Valuation; closely held corporation; book v. fair market value. A decedent entered into an agreement providing that his estate would sell the stock in a closely held corporation to that corporation at book value and later, entered into a second agreement holding that if the Commissioner disregarded the book value for estate tax valuation purposes the stockholders would release the estate from the earlier agreement and include the stock in the estate at fair market value. *Held*, the second agreement was valid and the parties are released from the obligations of the first agreement. (Sec. 2031, '54 Code.)

Edward E. Dickinson, Jr., 63 T.C. 771, Acq., 1977–2 C.B. 1.

160.29 Valuation; closely held or no fair market value; intangible assets. In valuing the stock of closely-held corporations, or the stock of corporations where market quotations are not available, all other available financial data, as well as all relevant factors affecting the fair market value must be considered. The general approach methods, and factors which must be considered in valuing such securities are outlined. Section 4.02(f) of Rev. Rul. 59–60 is modified by Rev. Rul. 65–193 to eliminate the rule that the value of intangible assets of a business may be measured by the amount by which the appraised value of the tangible assets exceeds the net book value of such assets. Amplified by Rev. Rul. 77–287. Rev. Rul. 54–77 superseded. Modified by Rev. Rul. 83–120. §§81.10, 20.2031–2. (Sec. 811(k), '39 Code; Sec. 2031; '54 Code.)

Rev. Rul. 59–60, 1959–1 C.B. 237; Rev. Rul. 65–193, 1965–2 C.B. 370.

160.30 Valuation; mutual fund shares. Mutual fund shares are to be valued for estate tax purposes at the redemption or "bid" price for which the mutual fund redeems its shares from its shareholders; section 20.2031–8(b) of the regulations requiring such shares to be valued at the public offering price is held to be unreasonable and invalid.§20.2031–8. (Sec. 2031, '54 Code.)

Cartwright, 411 U.S. 546, Ct. D. 1957, 1973–1 C.B. 400.

160.31 Valuation; mutual fund shares. Participating agreements in a mutual fund owned by a decedent are valued at their liquidation price. (Secs. 2013, 2031; '54 Code.)

Isabelle M. Sparling, 60 T.C. 330, Acq., 1978–2 C.B. 3.

160.32 Valuation; recapitalization of closely held business. The significant factors in deriving the fair market value of preferred and common stock received in certain corporate reorganizations are discussed. Rev. Rul. 59–60 amplified. §§20.2031–2, 25.2512–2. (Secs. 305, 351, 354, 368, 2031, 2512; '54 Code.)

Rev. Rul. 83–120, 1983–2 C.B. 170.

160.33 Valuation; revocable trust. The placing of jointly held securities, by a surviving spouse, into a revocable trust over which she has an unrestricted power of disposition, does not constitute a disposition of the securities so as to preclude the valuation of the property, to the extent that it still forms a part of the trust estate as of a date one year after decedent's death.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 59–213, 1959–1 C.B. 244.

160.34 Valuation; shares in mutual funds. The Service will not disturb the valuation prior to October 11, 1963, of shares in an open-end investment company, which are returned on the basis of the redemption value or the mean between the redemption value and the public offering price, provided that, if requested by the district director, a collateral agreement is furnished by all the interested parties that the value so determined will be treated by the executor and all distributees as the ax basis of any shares so valued.§20.2031-8. Sec. 601.105, S.P.R.; Sec. 2031, '54 Code.)

Rev. Proc. 64-18, 1964-1 (Part 1) C.B. 681.

160.35 Valuation; voting trust certificates. In 1946, family members deposited their stock in a corporation, representing 51% control, into a 20-year voting trust for certificates. The trust agreement provided for prior termination or extension and contained pre-emption provisions which required a first-offer to other certificate holders and then to corporation employees before certificates could be sold. The pre-emption price was based on dividends and all transferred certificates remained subject to the terms of the agreement. Periodic inter-vivos gifts and transfers were made before and after death. On estate tax returns, the certificates were valued at the prevailing pre-emption price which was always substantially lower than the over-the-counter quote. The Commissioner contended that the pre-emption price should be ignored and the certificates valued at the value of the underlying stock. *Held,* the pre-emption price was not determinative as to value but is a factor to be considered along with all other relevant valuation factors and neither the over-the-counter price of the underlying shares nor the formula price represented the absolute index of fair market value. (Secs. 2031, 2512; '54 Code.)

Pearl Gibbons Reynolds, 55 T.C. 172, Acq., 1971-2 C.B. 2.

160.36 Valuation; voting trust certificates. The estate adjusted current earnings by an extraordinary bad debt loss for purposes of applying a price-earnings ratio to arrive at a value, subsequently discounted, for a minority interest in closely held voting trust certificates. The Commissioner disallowed the bad debt deduction and the discount, basing the values on the assumption of a private sale of all the stock. *Held,* the bad debt deduction while affecting future earnings, does not affect the current earnings is allowed; the discount was proper as the shares do not represent voting control. (Secs. 2031, 2035, 2512; '54 Code.)

Louis Zaiger, 64 T.C. 927, Acq., 1976-1 C.B. 1.

160.37 Valuation of restricted stock. Guidelines are set forth for the valuation, for Federal tax purposes, of securities that cannot be immediately resold because they are restricted from resale pursuant to Federal securities laws. Rev. Rul. 59-60 amplified.§§20.2031-2, 20.2032-1. (Secs. 170, 2031, 2032, 2512; '54 Code.)

Rev. Rul. 77-287, 1977-2 C.B. 319.

Seizure of property

(See: ADMINISTRATIVE: Levy)

Situs of property

162.1 Bank deposits held by U.S. bank as fiduciary. Special funds deposited in a bank in the U.S. by or for a nonresident alien and held by the bank as a fiduciary are treated as property within the U.S. G.C.M. 22419 superseded. Clarified by Rev. Rul. 82-193. §20.2105-1. (Sec. 2105, '54 Code.)

Rev. Rul. 69-596, 1969-2 C.B. 179.

162.2 Bonds owned by nonresident; destroyed by war. A nonresident alien decedent owned bearer bonds of a domestic corporation and placed them in England where they were destroyed in an air raid in 1941. The decedent, a German national, lived in Germany from a time prior to 1941 until his death in 1944. The bonds were reissued pursuant to the demand of the Alien Property Custodian who took over decedent's property in 1943. *Held,* the temporary absence (until reissued) of the bonds from England was not sufficient to cause a shift in their situs to the U.S. so as to be includible in the estate of the decedent. *Held further,* the bonds were not physically situated in the U.S. at the time the decedent made a revocable transfer of the bonds to his son. (Secs. 861(a), 862(b), '39 Code; Secs. 2103, 2104, 2106, '54 Code.)

Curt E. Pulvermann, 30 T.C. 231, Acq., 1958-2 C.B. 7.

162.3 Canadian timber license. A Canadian timber license that is renewable from year to year constitutes personal property situated outside the U.S. rather than real property. The value of such license, determined under the laws of the U.S., is includible in determining the gross estate of a decedent, who is a resident citizen of the U.S.§81.13. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 65, 1953-1 C.B. 391.

162.4 Common trust fund shares; nonresident. Where trust funds held by a New York trust company under a revocable deed of trust executed by a resident and national of Great Britain are invested by the trustee in participating units of a common trust fund, the situs of the participating units is in the U.S.§81.50. (Sec. 863, '39 Code; Sec. 2105, '54 Code.)

Rev. Rul. 55-163, 1955-1 C.B. 674.

162.5 Community property; realty. Where a married man domiciled in Texas purchases, in his own name and with community funds acquired in Texas, real property located in New Mexico and Kansas and predeceases his wife, only one-half of the value of such property is includible in his gross estate in accordance with the respective interests of the husband and wife in such property under the laws of the state where the property is located.§81.13. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 54-89, 1954-1 C.B. 181.

162.6 Stock; Canadian corporation. Shares of stock of a Canadian corporation owned by a decedent who, at the time of death, was a citizen and resident of Canada are not subject to the Federal estate tax, even though the stock transfer offices of the corporation are located in the U.S.§81.50. (Sec. 862, '39 Code; Sec. 2104, '54 Code.)

Rev. Rul. 54-407, 1954-2 C.B. 657.

162.7 United Kingdom convention; bank deposits in trust; nonresident alien. Checking and savings accounts held in trust for a nonresident alien decedent are debts under the U.S.-United Kingdom Estate Tax Convention; therefore, the situs of the accounts is deemed to be the domicile of the decedent at date of death.

Rev. Rul. 72-189, 1972-1 C.B. 442.

162.8 United Kingdom convention; partnership interest. In the application of the U.S.-United Kingdom Estate Tax Convention, a partner's share in a copartnership is situated where the partnership business is carried on, not necessarily where the assets are located or where the decedent was domiciled.

Rev. Rul. 55-701, 1955-2 C.B. 836.

162.9 United Kingdom convention; unpaid commissions. Earned but unpaid commissions due a United Kingdom citizen domiciled in the United States at the time of his death constitute a "debt" within the meaning of Article III(2)(c) of the Convention and have a situs only in the U.S. However, the right to commissions accruing after death do not constitute a "debt" under the Convention.

Rev. Rul. 54-618, 1954-2 C.B. 658.

162.10 U.S. bank fiduciary; nonresident alien; certificate of deposit. A nonresident alien decedent's interest in a trust is treated as property without the U.S. under section 2105(b), and is thus excludable from the gross estate, even though the trust funds are held in a U.S. bank certificate of deposit at the decedent's death. Rev. Rul. 69-596 clarified. §§20.2033-1, 20.2103-1, 20.2105-1. (Secs. 861, 2033, 2103, 2105; '54 Code.)

Rev. Rul. 82-193, 1982-2 C.B. 219.

State death taxes

(See: Credits against tax)

Statute of limitations

(See: ADMINISTRATIVE: Limitation period)

Suits

(See: ADMINISTRATIVE)

Tax

Credits

(See: Credits against tax; ADMINISTRATIVE: Refunds and credits)

Deductions

164.1 Community property state; Texas. A deduction for only one-half of the amount of unpaid ad valorem taxes on decedent's separate property is allowable in the estate of a decedent subject to Texas community property law, except where it is judicially determined that the nonowner spouse has a right of equitable reimbursement for taxes already paid with his or her funds.§20.2053-1. (Sec. 2053, '54 Code.)

Rev. Rul. 66-21, 1966-1 C.B. 219.

164.2 Foreign death taxes; Canada. The Canadian tax on capital gains on the deemed disposition of real property at decedent's death is not an inheritance, legacy, or estate tax for purposes of section 2014, therefore, a foreign death tax credit is not allowed for payment of the tax. However, a deduction in the amount of the tax is allowable under section 2053(a)(3) as a claim against the decedent's estate. §§20.2014-1, 20.2053-6. (Secs. 2014, 2053; '54 Code.)

Rev. Rul. 82-82, 1982-1 C.B. 127.

164.3 Gift taxes; post death consent to gift-splitting. The gift taxes paid by a decedent's estate, pursuant to the executor's consent to gift-splitting subsequent to the decedent's death with respect to gifts made by decedent's spouse prior to his death, are not deductible. There was no enforceable obligation of the decedent existing at the time of his death.§20.2053-6. (Sec. 2053, '54 Code.)

Rev. Rul. 70-600, 1970-2 C.B. 194.

164.4 Income tax; allocation of decedent's share. Where a decedent's income is included in a joint income tax return by his estate and wife, the tax attributable to the decedent's income shall be that proportion of the joint liability which the decedent's tax, separately filed, bears to the total tax for which the decedent and his spouse would have been liable on separate returns. For this computation, there is taken into account a tax computed on the decedent's income for the part of the year prior to his death and on the income of the surviving spouse for the entire year. Rev. Rul. 56-290 clarified. Rev. Rul. 54-382 modified.§§81.13, 81.37. (Secs. 811(a), 812(b), '39 Code; Sec. 2053, '54 Code.)

Rev. Rul. 54-382, 1954-2 C.B. 279; Rev. Rul. 56-290, 1956-1 C.B. 445; Rev. Rul. 57-78, 1957-1 C.B. 300.

164.5 Income tax; deficiencies. Income tax deficiencies assessed against a decedent, due to the nonrecognition of a family partnership, are deductible from the decedent's gross estate in the full amount paid by the estate.§81.37. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Rev. Rul. 56-6, 1956-1 C.B. 660.

164.6 Income tax; liability incurred prior to death. In determining the net value of the assets of a inter vivos trust created by the decedent and included in his gross estate, allowance should be made for any income tax liability incurred by the trust prior to the date of decedent's death. No allowance should be made for any income tax liability incurred by the trust subsequent to that date, regardless of the valuation date applicable.§81.37. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Rev. Rul. 55-601, 1955-2 C.B. 606.

164.7 Real property taxes; California Under California law real property tax liens attach annually on the first Monday in March preceding the fiscal year for which the taxes are levied and are enforceable obligations on the date the lien attaches. The fiscal year runs from July 1st through the following June 30th. These taxes are considered to accrue on the first Monday in March for purposes of the Federal estate tax and, therefore, are deductible in determining the taxable estate of decedents dying after the lien date whether before the beginning of the fiscal year or after.§20.2053-6. (Sec. 2053, '54 Code.)

Rev. Rul. 65-274, 1965-2 C.B. 377.

164.8 Real property taxes; Iowa. Property taxes in Iowa, which become a lien on the assessed property when levied each September, constitute an indebtedness in respect of such property, and the value of real property located in Iowa which is included in a decedent's gross estate should reflect a reduction for the tax liens thereon at the time of his death, although such liens cannot be deducted as claims against the estate because they are not, under Iowa law, personal obligations of the landowner.§20.2053-6. (Sec. 2053, '54 Code.)

Rev. Rul. 66-211, 1966-2 C.B. 439.

164.9 Real property taxes; Michigan. Michigan real property taxes of a decedent who died on March 7, 1962, were held to be an enforceable obligation on their assessment date, December 31, 1961, although there was no personal liability until the following December 1, and such taxes were properly deducted on the decedent's estate tax return. (Sec. 2053, '54 Code.)

Marvin L. Pardee, 49 T.C. 140, Acq., 1973-2 C.B. 3.

164.10 Real property taxes; Washington State. Only that portion of the real property taxes levied by the State of Washington which is proportionate to the period of the calendar year preceding a decedent's death is deductible from the gross estate of the decedent.§20.2053-6. (Sec. 2053, '54 Code.)

Rev. Rul. 68-335, 1968-1 C.B. 406.

164.11 State gift tax paid for transfer included in donor's state inheritance tax base. A state gift tax paid by a donor on a transfer later included in the donor's state inheritance tax base, and regarded as an advance payment of state inheritance tax, does not create an asset of the estate for purposes of section 2033 and is not includible in the decedent's gross estate at death. A credit under section 2011 is not allowable for any amount of inheritance tax considered paid by a credit of state gift tax paid before death. A state gift tax unpaid at death, which gives rise to a credit against the state inheritance tax when paid, is not allowable as a credit under section 2011, but is deductible as a claim against the estate under section 2053. Rev. Ruls. 71-355 and 75-63 revoked. §§20.2011-1, 20.2033-1, 20.2053-6. (Secs. 2011, 2033, 2053; '54 Code.)

Rev. Rul. 81-302, 1981-2 C.B. 170; Grace E. Lang, 64 T.C. 404 Acq., 1981-2 C.B. 2; George E. P. Gamble, 69 T.C. 942, Acq., 1981-2 C.B. 1.

Payments
(See: ADMINISTRATIVE: Payment of tax)

Tax conventions

Administrative

166.1 Code of Federal Regulations; redesignated. Regulations under tax conventions appearing in 26 CFR are transferred to Subchapter G and redesignated as Part 500 et seq.

Announcement (CFR Editorial Redesignations), 1961-1 C.B. 863.

Australia

166.2 Unified credit. The term "specific exemption" referred to in the estate tax convention between the United States and Australia may not be construed to include the section 2010 unified credit added to the Code by the Tax Reform Act of 1976. Accordingly, the estate of a citizen and resident of Australia is entitled to only the $3,600 unified credit allowed under section 2120(c)(2) of the Code.

Rev. Rul. 81-303, 1981-2 C.B. 255.

Canada

166.3 Death tax; rebate by Province of Alberta. Death tax rebates received from the Canadian Province of Alberta by the estate of a U.S. citizen decedent, domiciled at death in Alberta, are considered a "reduction" of the Canadian estate tax within the meaning of Article V of the U.S.-Canada Death Tax Convention of 1962 for purposes of determining the credit allowable for Canadian death taxes.§20.2014-4. (Sec. 2014, '54 Code.)

Rev. Rul. 73-240, 1973-1 C.B. 399.

166.4 Stock of Canadian corporation. Shares of stock of a Canadian corporation owned by a decedent who, at the time of death, was a citizen and resident of Canada are not subject to the Federal estate tax, even though the stock transfer offices of the corporation are located in the U.S.§81.50. (Sec. 862, '39 Code; Sec. 2104, '54 Code.)

Rev. Rul. 54-407, 1954-2 C.B. 657.

Finland

166.5 Unified credit. The term "specific exemption" referred to in the estate tax convention between the United States and Finland may not be construed to include the section 2010 unified credit added to the Code by the Tax Reform Act of 1976. Accordingly, the estate of a citizen and resident of Finland is entitled to only the $3,600 unified credit allowed under section 2102(c)(2) of the Code.

Rev. Rul. 81-303, 1981-2 C.B. 255.

France

166.6 Tax on stock. The credit authorized by Article 5(2) of the estate tax convention between the U.S. and France may not be applied against the tax imposed by the U.S. on shares of stock of corporations organized in countries other than the U.S. and France included in the gross estate of a U.S. citizen domiciled in France at the time of his death. The relief from double taxation authorized by Article 14 of the convention may be applied only where the action of the revenue authorities of the U.S. or France has resulted in double taxation.

Rev. Rul. 56-251, 1956-1 C.B. 846.

Greece

166.7 Unified credit The term "specific exemption" referred to in the estate tax convention between the United States and Greece may not be construed to include the section 2010 unified credit added to the Code by the Tax Reform Act of 1976. Accordingly, the estate of a citizen and resident of Greece is entitled to only the $3,600 unified credit allowed under section 2102(c)(2) of the Code.

Rev. Rul. 81-303, 1981-2 C.B. 255.

Italy

166.8 Unified credit. The term "specific exemption" referred to in the estate tax convention between the United States and Italy may not be construed to include the section 2010 unified credit added to the Code by the Tax Reform Act of 1976. Accordingly, the estate of a citizen and resident of Italy is entitled to only the $3,600 unified credit allowed under section 2102(c)(2) of the Code.

Rev. Rul. 81-303, 1981-2 C.B. 255.

Japan

166.9 Unified credit. The term "specific exemption" referred to in the estate tax convention between the United States and Japan may not be construed to include the section 2010 unified credit added to the Code by the Tax Reform Act of 1976. Accordingly, the estate of a citizen and resident of Japan is entitled to only the $3,600 unified credit allowed under section 2102(c)(2) of the Code.

Rev. Rul. 81-303, 1981-2 C.B. 255.

Norway

166.10 Unified credit. The term "specific exemption" referred to in the estate tax convention between the United States and Norway may not be construed to include the section 2010 unified credit added to the Code by the Tax Reform Act of 1976. Accordingly, the estate of a citizen and resident of Norway is entitled to only the $3,600 unified credit allowed under section 2102(c)(2) of the Code.

Rev. Rul 81-303, 1981-2 C.B. 255.

Switzerland

166.11 Unified credit. The term "specific exemption" referred to in the estate tax convention between the United States and Switzerland may not be construed to include the section 2010 unified credit added to the Code by the Tax Reform Act of 1976. Accordingly, the estate of a citizen and resident of Switzerland is entitled to only the $3,600 unified credit allowed under section 2102(c)(2) of the Code.

Rev. Rul. 81-303, 1981-2 C.B. 255.

United Kingdom

166.12 Bank deposits in trust; situs. Checking and savings accounts held in trust for a nonresident alien decedent are debts within the meaning of Article III(2)(c) of the U.S.-United Kingdom Estate Tax Convention; therefore, the situs of the accounts is deemed to be the domicile of the decedent at date of death.

Rev. Rul. 72-189, 1972-1 C.B. 442.

166.13 Claims; tax attributable to reversionary interest. Claims for credit or refund of estate tax attributable to reversionary interests under Article VI(1) of the United Kingdom death duty convention must be made under the terms and conditions prescribed by the statutes of the contracting parties.§81.79(b). (Sec. 925, '39 Code; Secs. 6163, 6601, '54 Code.)

Rev. Rul. 54–78, 1954–1 C.B. 390.

166.14 Common trust fund shares; situs of property. Where trust funds held by a New York trust company under a revocable deed of trust executed by a resident and national of Great Britain are invested by the trustee in participating units of a common trust fund, the situs of the participating units is in the U.S.§81.50. (Sec. 863, '39 Code; Sec. 2105, '54 Code.)

Rev. Rul. 55–163, 1955–1 C.B. 674.

166.15 Partnership interest. In the application of the U.S.-United Kingdom Estate Tax Convention, a partner's share in a copartnership is situated where the partnership business is carried on, not necessarily where the assets are located or where the decedent was domiciled.

Rev. Rul. 55–701, 1955–2 C.B. 836.

166.16 Unpaid commissions; situs of property. Earned but unpaid commissions due a United Kingdom citizen domiciled in the U.S. at the time of his death constitute a "debt" within the meaning of Article III(2)(c) of the Convention and have a situs only in the U.S. However, the right to commissions accruing after death do not constitute a "debt" under the Convention.

Rev. Rul. 54–618, 1954–2 C.B. 658.

Tax Court

(See: ADMINISTRATIVE)

Tenancy in common

(See: Interests in property)

Transferees

(See: ADMINISTRATIVE: Liability for tax)

Transfers

(See also: Interests in property)

168.1 Acquiescence in a recapitalization of closely held stock in a trust; release of general power of appointment. Acquiescence in a recapitalization of closely held stock in a trust is a transfer by the trust beneficiary subject to the gift tax, where the recapitalization results in a shift in the beneficiary's interest by decreasing the value of the remainder interest over which the beneficiary has a general power of appointment. §§20.2036–1, 20.2041–3, 25.2511–1, 25.2514–1, (Secs. 2036, 2041, 2511, 2514; '54 Code.)

Rev. Rul. 86–39, 1986–11 I.R.B. 23.

168.2 Adequate and full consideration; compromise of dispute. The decedent, within three years of her death, transferred to her stepchildren a remainder interest in real estate in settlement of a dispute between them over property to which title vested absolutely in the decedent when her husband died and left her as surviving tenant by entireties. *Held,* the settlement was regarded as "economically advantageous" by the decedent. Therefore, the transfer was not subject to the estate tax as it was made for an adequate and full consideration in money or money's worth. (Secs. 2035, 2036, 2043; '54 Code.)

Gertrude Friedman, 40 T.C. 714, Acq., 1964–1 (Part 1) C.B. 4.

168.3 Bonds; care of decedent's child. The decedent transferred U.S. Treasury bonds having a face value of $25,000 to his brother and sister, who were his executors and trustees, in consideration of their past, present, and future services in the care of the decedent's six-year old daughter and her affairs. *Held,* the transfer was for an adequate consideration and the value of the bonds was not includible in the decedent's gross estate. (Sec. 811(c), 811(i), '39 Code; Secs. 2035, 2043, '54 Code.)

Samuel Want, 29 T.C. 1223, Acq., 1958–2 C.B. 8.

168.4 Charitable remainder annuity trust; private annuitant; valuation. The portion of a charitable remainder trust includible in the decedent-grantor's gross estate, where the decedent is the private annuitant, is that portion of trust corpus necessary to yield the private annuity payment, assuming a 6 percent return. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 82–105, 1982–1 C.B. 133.

168.5 Charitable remainder unitrust; valuation. The entire value of the corpus of an inter vivos charitable remainder unitrust from which the grantor retained a life payment of a unitrust adjusted payout rate of 5.660 percent or greater is includible in the decedent's gross estate. The method is provided to compute the proportion of the trust assets includible in the gross estate for a unitrust adjusted payout rate less than 5.660 percent. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 76–273, 1976–2 C.B. 268.

168.6 Civil service annuities. Where a Federal civil service employee elects at the time of his retirement to apply voluntary contributions to the purchase of a reduced life annuity for himself and after his death one-half thereof to his beneficiary, the value of the survivorship annuity passing to his beneficiary at his death prior to January 1, 1954, is includible in his gross estate.§81.17. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 55–682, 1955–2 C.B. 601.

168.7 Civil service annuities; employee dying before retirement. Where an individual covered under the U.S. Civil Service Retirement System dies before retirement, the amount includible in his gross estate on account of an annuity payable to his beneficiaries is the amount of his contribution to the system, plus the interest accrued thereon. (Sec. 2039, '54 Code.)

Rev. Rul. 56–1, 1956–1 C.B. 444.

168.8 Community property to third person. Where, under the laws of a community property state, the husband, as the managing member of the community, may give property to third persons, the value of one-half of any gifts made in contemplation of the wife's death is includible in her gross estate. (Sec. 2035, '54 Code.)

Rev. Rul. 56–408, 1956–2 C.B. 600.

168.9 Conditional bequest; third party. No deduction is allowable for a testamentary bequest to charity which is conditioned upon the full approval of a thrid party after the testator's death.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 64–129, 1964–1 (Part 1) C.B. 329.

168.10 Credit against tax; life estate. The value of a life estate, without more, qualifies for the credit for tax on prior transfers notwithstanding the fact that it is not included in the gross estate of the transferee decedent.§20.2013–1. (Sec. 2013, '54 Code.)

Rev. Rul. 59–9, 1959–1 C.B. 232.

168.11 Credit against tax; widow's statutory allowance. The amount received from the estate of a prior decedent under a state statute as a widow's allowance represents property received by the decedent from the transferor's estate for the purpose of the credit for tax on prior transfers provided it was paid out of the principal of the transferor's estate and was not allowed as a deduction from his gross estate as an amount expended for support of dependents, nor allowed as a marital deduction. (Sec. 2013, '54 Code.)

Rev. Rul. 58–167, 1958–2 C.B. 340.

168.12 Death benefit from employer; power to alter designated beneficiary. The death benefit provision of an employment contract providing if death occurred during the term of the contract the employer would pay the benefit to the decedent's designated beneficiary, which the decedent could change during the course of employment, satisfies the transfer requirement and the amount of the death benefit will be includible in the gross estate. §20.2038–1. (Sec. 2038, '54 Code.)

Rev. Rul. 76–304, 1976–2 C.B. 269.

168.13 Death benefit from employer; retained reversionary interest. A decedent, who entered into an employment contract that provided that if death occurred during the term of the contract the employer would pay a death benefit to the decedent's spouse and that if the spouse predeceased the decedent the death benefit was to be paid to the decedent's estate, effected a transfer under section 2037 and retained a reversionary interest in the death benefit the value of which is includible in the decedent's gross estate.§20.2037–1. (Sec. 2037, '54 Code.)

Rev. Rul. 78–15, 1978–1 C.B. 289.

168.14 Foreign real estate; retained life estate. The value of foreign real estate is includible in gross estate where the decedent transferred her interest in the property prior to the Revenue Act of 1962 but continued retention of the life estate until her death in 1965.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 69–165, 1969–1 C.B. 220.

168.15 Generation-skipping, addition to trust; valuation date. The date for valuing an addition to a trust, for purposes of the Generation-Skipping Transfer Tax, is the date the will or trust provision requiring the addition becomes effective. §26.2601. (Sec. 2601, '54 Code.)

Rev. Rul. 82–36, 1982–1 C.B. 146.

168.16 Interests in property; undivided portion. Application of section 2055(e) of the Code to the deduction for certain transfers with respect to estates of decedents dying after 1969 and before October 4, 1972 where the interest transferred is an undivided portion of an entire interest in property.§20.2055–2. (Sec. 601.105, S.P.R.; Sec. 2055, '54 Code.)

Rev. Proc. 72–45, 1972–2 C.B. 826.

168.17 Interrelated reciprocal trust. Decedent transferred personal and real property to his wife, but retained control over such property. Later, decedent and his wife executed two interrelated trusts substantially identical and created at approximately the same time. The trust created by the wife included all the property originally transferred to her by the decedent. Both trusts were part of a single transaction designed and carried out by the decedent. The transfers in trust left each party in the same economic positions as before. Thus, decedent's estate remained undiminished to the extent of the value of his wife's trust, and the value of his estate must, accordingly, be increased by the value of that trust.§20.2036–1. (Sec. 2036, '54 Code.)

Grace, 395 U.S. 316, Ct. D. 1927, 1969–2 C.B. 173.

168.18 Jointly owned property. Where a husband and wife transferred jointly owned property to their children, which was found to have been made in contemplation of death, only one-half of the property transferred was includible in the decedent husband's gross estate. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Don Murillo Brockway, 18 T.C. 488, Nonacq. withdrawn and Acq. substituted, 1969–2 C.B. xxiv.

168.19 Leaseback of farm transferred to children. Decedent and his spouse conveyed their farm to their adult children by deed of gift. Contemporaneously, the children leased the farm back to them for a fractional share of the crops. Decedent opened a savings account for each child, naming himself trustee, and deposited to each account a share of the income as rent for 1957 and 1958. In 1959, decedent was seriously injured and two of the children were having family problems; therefore, the rent from 1959 through 1963 was not paid. Shortly before decedent's death, he and his wife assigned the lease to a third party effective from 1963 through 1966. All rental payments under the assignment were paid directly to the children. *Held,* no part of the value of the farm is includible in decedent's estate. The property was conveyed absolutely, the leaseback was for adequate consideration, and deposits to the trusteed savings accounts and unforeseen family problems leading to failure to pay rent does not support inference that decedent retained the right to income from the property. (Sec. 2036, '54 Code.)

Roy D. Barlow, 55 T.C. 666, Acq., 1972–2 C.B. 1.

168.20 Life insurance; within 3 years of death. An employee who was insured under a group term life insurance policy, the premiums for which were paid by the employer, assigned all rights under the policy to the insured's spouse in 1971 under an agreement assigning the spouse the rights under any arrangement of the employer for life insurance coverage. The employer terminated its insurance arrangement and obtained a similar arrangement with a different insurer in 1977, less than three years before the insured's death, and the insured assigned the new policy to the spouse. The value of the policy proceeds is not includible in the insured's gross estate. Rev. Rul. 79–231 revoked. (Sec. 2035, '54 Code.)

Rev. Rul. 80–289, 1980–2 C.B. 270.

168.21 Life insurance; within 3 years of death. The value of a renewable group term life insurance policy is not includible in a decedent's gross estate under section 2035 when the decedent assigned the policy more than three years before death, but is considered to have made premium payments until death. (Sec. 2035, '54 Code.)

Rev. Rul. 82–13, 1982–1 C.B. 132.

168.22 Life insurance; within 3 years of death; controlled corporation. The value of life insurance proceeds is includible in the decedent's gross estate when a decedent's controlled corporation transfers, within 3 years of death, all incidents of ownership in a policy on the decedent's life. §20.2042–1. (Secs. 2035, 2042; '54 Code.)

Rev. Rul. 82–141, 1982–2 C.B. 209.

168.23 Life insurance; within 3 years of death; insured predeceased. The proceeds of an insurance policy on the life of another are includible in a decedent's gross estate if the decedent assigns that policy within three years of death and the insured predeceases the decedent. (Sec. 2035, '54 Code.)

Rev. Rul. 81–14, 1981–1 C.B. 456.

168.24 Life insurance and accidental death insurance policies. Proceeds of life insurance policies transferred by decedent more than three years before death are not includible in gross estate. However, the value of any premiums paid by the decedent on the policies within three years of his death is includible. Further, proceeds from a one-year accidental death policy transferred nine months before accidental death are includible in gross estate. Rev. Rul. 67–463 revoked.§20.2035–1. (Sec. 2035, '54 Code.)

Rev. Rul. 71–497, 1971–2 C.B. 329.

168.25 Life insurance policy. In 1931, decedent created an irrevocable trust to which he transferred 11 life insurance policies. The beneficiary was changed from his wife to the trustee, a bank, which was to receive all income, gains and profits and upon trustor's death invest the proceeds for the wife's benefit. The trustee's only compensation was to be through its authority to deal with the trust funds and investments through certain affiliated security and other companies. Following the trust's creation, a change in state law forbids a trustee in investment of funds to deal with itself or an affiliate, and prior to decedent's death in 1946 certain insurance proceeds and dividends were paid directly to him. *Held,* the corpus of the life insurance trust was not includible in decedent's gross estate. The transfers were not made in contemplation of death and decedent had made a legal assignment to the trustee of all incidents of ownership in the policies and all rights to trust income. (Secs. 811(c), 811(g), '39 Code; Secs. 2035, 2042, '54 Code.)

Louis Richards, 20 T.C. 904, Acq., 1954–1 C.B. 6.

168.26 Life insurance policy; premiums paid by beneficiary. Only that portion of the proceeds of an insurance policy on the life of a decedent, who had transferred the policy, within three years prior to death, to the beneficiary of the policy who thereafter paid the premiums, that bears the same ratio to the entire proceeds as the premiums paid by the decedent bears to the total premiums paid for the policy is includible in the decedent's gross estate. (Secs. 2035, 2042; '54 Code.)

Morris R. Silverman, 61 T.C. 338, Acq., 1978–1 C.B. 2.

168.27 Life insurance policy; premiums paid in contemplation of death. The amount includible in the gross estate of a decedent who paid all premiums on an insurance policy on her life purchased more than three years before her death by her children, who were the owners and beneficiaries, is the portion of the premiums paid in contemplation of death. The portion of the proceeds attributable to such premiums is not includible. (Secs. 2035, 2042; '54 Code.)

Inez G. Coleman, 52 T.C. 921, Acq., 1978–1 C.B. 1.

168.28 Life insurance policy and annuity purchased concurrently. The proceeds of the life insurance portion of single-premium life insurance policy and life annuity contract combinations are not includible in the gross estate of the insured as a transfer with income retained, where such proceeds are payable to named beneficiaries and together with all rights under the insurance policy have been irrevocably and completely assigned by the insured. Rev. Rul. 54–552 modified.§§81.18, 20.2036–1. (Sec. 811(c), '39 Code; Sec. 2036, '54 Code.)

Rev. Rul. 54–552, 1954–2 C.B. 284; Rev. Rul. 65–69, 1965–1 C.B. 440.

168.29 Life insurance proceeds to trust. The value of trust corpus established with proceeds of insurance on the life of decedent's predeceased husband is not includible in her estate where the insurer consents to a court authorized lump-sum distribution in lieu of monthly payments.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 70–84, 1970–1 C.B. 188.

168.30 Power to alter; donor custodian for minor donee. The value of property transferred by a donor to himself as custodian for a minor donee, pursuant to a model custodian act of a state, is includible in the donor's gross estate in the event of his death while acting as custodian and before the donee attains the age of 21 years. (Rev. Rul. 57–366). The value of property transferred to a minor under either the Model Gifts of Securities to Minors Act or the Uniform Gifts to Minors Act is includible in the donor's gross estate if he appoints himself custodian and dies while serving in that capacity before the minor reaches the age of 21 years. (Rev. Rul. 59–357). Amplified by Rev. Rul. 70–348 to provide that the value of securities transferred by the decedent under the Uniform Gifts to Minors Act and held by him as successor custodian at the time of his death is includible in his gross estate.§20.2038–1. (Sec. 2038, '54 Code.)

Rev. Rul. 57–366, 1957–2 C.B. 618; Rev. Rul. 59–357, 1959–2 C.B. 212; Rev. Rul. 70–348, 1970–2 C.B. 193.

168.31 Qualified conservation contributions. Technical amendments are set forth to section 20.2055–2 of the regulations, adopted by T.D. 8069, that relate to qualified conservation contributions.

Notice 86–12, 1986–43 I.R.B. 9.

168.32 Reciprocal trusts. H transferred 1000 shares of stock in trust to pay the income to his wife, W, for life. Simultaneously, W transferred 750 shares of stock in trust to pay the income to H for life. Each is presumed to have granted a life estate in trust in consideration of receiving a life estate in trust created by the other, and the value of 750 shares of the stock transferred in trust by each is includible in his or her gross estate as a transfer with a retained life estate. (Sec. 2036, '54 Code.)

Rev. Rul. 57–422, 1957–2 C.B. 617.

168.33 Relinquishment of power; portion of property left in trust. The decedent, life income beneficiary of a trust, had power to alter or modify the trust with the consent of the trustee as well as a power of appointment exercisable by will. He attempted to revoke the trust but did not receive the trustee's consent. Subsequently, under a compromised agreement, one-half of the trust corpus was paid to the decedent and he relinquished his powers under the trust. *Held,* the attempted revocation of the old trust was ineffective and the compromise agreement did not constitute a transfer to a new trust. The remaining trust corpus was not includible in the decedent's estate. (Sec. 811(c), '39 Code; Sec. 2036, '54 Code.)

Alan R. Denzer, 29 T.C. 237, Acq., 1958–2 C.B. 5.

168.34 Relinquishment of power to revoke trust. Within the meaning of section 7 of the Technical Changes Act of October 25, 1949, as amended, a revocable inter vivos transfer in the form of a trust with income retained is deemed to have been made at the time after March 3, 1931, when the donor relinquished his power to revoke, amend, or terminate the trust rather than in 1926 when the trust was created, and the value thereof is includible in the donor's gross estate.§81.18 (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 277, 1953–2 C.B. 265.

168.35 Relinquishment of retained life estate; contemplation of death. Where a decedent transferred property retaining only a life estate therein and later relinquished his life estate in contemplation of death, the entire value of the property is includible in the gross estate.§81.16. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 56–324, 1956–2 C.B. 999.

168.36 Residence; community property interest. Decedent, 14 years prior to his death, conveyed to his wife by warranty deed his community interest in their homestead property "for her own use and benefit and her separate property." The deed was complete and reserved no interest to remain in decedent. *Held,* as a matter of law the decedent retained no interest in the homestead property and one-half of the value of such property is not includible in decedent's gross estate. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Robert W. Wi[illegible]n, 17 T.C. 409, Acq. withdrawn and Nonacq. substituted, 1966–1 C.B. 4.

168.37 Residence; inter-spouse transfer. A retired executive quit-claimed his entire interest in the sole family residence to his wife without consideration in money or money's worth. He continued to pay taxes and occupy the residence with his wife until his death, eleven years after the transfer. *Held,* the joint occupancy of the residence after the inter-spouse transfer was insufficient in and of itself to indicate the decedent retained any right to occupancy or enjoyment and accordingly the value of the residence was not includible in decedent's gross estate. Decedent's use of the residence after the transfer was a natural use which did not diminish or withhold his wife's enjoyment and possession. (Sec. 2036, '54 Code.)

Allen D. Gutchess, 46 T.C. 554, Acq., 1967–1 C.B. 2.

168.38 Residence; transfer of title. The entire value of a residence occupied by a decedent and the decedent's child and conveyed in fee simple to the child by the decedent, who continued to enjoy unrestricted use and possession of the entire residence until death, is includible in the gross estate of the decedent under section 2036(a)(1). §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 78–409, 1978–2 C.B. 234.

168.39 Residence; transferred. The value of a residence that a donor continued to occupy until the time of his death after transferring the property, pursuant to the understanding of all parties, is includible in his gross estate.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 70–155, 1970–1 C.B. 189.

168.40 Retained interest; community property to spouse. Decedent transferred a community property interest in municipal bonds to the decedent's spouse in a state whose law provides that income from separate property is community property. Even though, after the transfer, decedent was entitled to one-half the income from all the bonds, only one-half the transferred interest (one-fourth of the value of the bonds) was a transfer with a retained life estate within the meaning of section 2036(a)(1) and includible in decedent's gross estate. (Sec. 2036, '54 Code.)

Winston C. Castleberry, 68 T.C. 682, Nonacq., 1978–2 C.B. 3.

168.41 Retained interest; Family Estate trust. The gross estate of a grantor-decedent must include, under sections 2036 and 2038, the value of any assets held by a so-called "Family Estate" which derive from his transfers of property to the "Family Estate" in exchange for units of beneficial interest, where he continued to enjoy the transferred property until his death and, with the other trustees, held a power to amend or terminate at his death. Further, the value of the units of beneficial interest, to the extent not included otherwise, must be included in the decedent's gross estate under section 2033. §§20.2033–1, 20.2036–1, 20.2038–1. (Secs. 2033, 2036, 2038; '54 Code.)

Rev. Rul. 75–259, 1975–2 C.B. 361.

168.42 Retained interest; timber rights; timberland transferred. The entire value of forest land given to an individual by a decedent who reserved for ten years all timber rights, which constitute personal property under the law of the state in which the timber is located, and died during the ten-year period without having removed any timber is includible in the decedent's gross estate.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 78–26, 1978–1 C.B. 286.

168.43 Retained interest; vacation property. The amount to be included in a decedent's gross estate, with respect to vacation property conveyed to the decedent's adult children with a retained right to use or rent the property for one month each year, is the value of the property multiplied by the percentage of annual rental income that was likely to have been generated during that month. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 79–109, 1979–1 C.B. 297.

168.44 Retained interests; charitable corporation. The value of inter vivos transfers to a charitable corporation is includible in the estate of the donor who, as president of the corporation, retained power over the disposition of its funds. The value is also includible in the value of the decedent's adjusted gross estate in determining the maximum marital deduction allowable and qualifies as a charitable deduction.§§20.2036–1, 20.2055–1, 20.2056(c)–1. (Secs. 2036, 2055, 2056; '54 Code.)

Rev. Rul. 72–552, 1972–2 C.B. 525.

168.45 Retained interests; tenants by entireties. Where property purchased by a husband from his separate funds and held in the name of himself and his wife as tenants by the entireties or as joint tenants is transferred in contemplation of death, only one-half of the value of the property is includible in each co-tenant's gross estate. Rev. Rul. 57–488 revoked.§20.2036–1. (Secs. 2035, 2036, 2040; '54 Code.)

Rev. Rul. 69–577, 1969–2 C.B. 173; A. Carl Borner, 25 T.C. 584, Acq.; Don Murillo Brockway, 18 T.C. 488, Acq.; Edward Carnell, 25 T.C. 654, Acq.; Julia Crawford Horner, 36 T.C. 337, Acq.; 1969–2 C.B. xxiii, xxiv.

168.46 Retained life estate; timber rights; timberland transferred. No part of the value of land is includible in the gross estate of a taxpayer who conveyed timber rights for five years to one person for cash and four unsecured promissory notes payable on the anniversary dates of the sale, sold the land to another person a month later, and died with 23 months remaining under the conveyance of timber rights with one note unpaid.§20.2036–1 (Sec. 2036, '54 Code.)

Rev. Rul. 77–193, 1977–1 C.B. 273.

168.47 Retained life estate; transferee's loan secured by mortgage on transferred property. Property in which a decedent retained a life estate is includible in the decedent's gross estate without an offset or deduction for a mortgage that was contracted for by the remainderman, even though the decedent was surety for the mortgage. §§20.2036–1, 20.2053–7. (Secs. 2036, 2053; '54 Code.)

Rev. Rul. 84–42, 1984–1 C.B. 211.

168.48 Revocable trust; created for support. Decedent and his wife contemporaneously executed a separation agreement calling for monthly payments and a trust agreement giving the wife income for life from assets transferred in trust. Neither agreement referred to the other. The subsequent divorce decree incorporated the provisions of the separation agreement but made no mention of the trust agreement. *Held,* (1) both the separation agreement and transfer in trust were made in consideration of the release of the wife's support rights, (2) the transfer in trust was not supported by adequate and full consideration and the decedent's gross estate includes the value of trust assets at date of death, minus the value on the date of transfer. (Secs. 2036, 2038, 2043; '54 Code.)

Howard Lee Davis, 51 T.C. 269, Acq., 1969–2 C.B. xxiv.

168.49 Right to annuity income. The commuted value of a right to receive annuity income, pursuant to an employer-employee agreement made prior to 10/8/49 providing for the retirement of the employee and, upon his death, payment to designated beneficiaries, is includible in decedent's gross estate. The value of such right is also includible in gross estate where the decedent possessed at his death the power to modify the contract.§81.17, 81.20. (Secs. 811(c), 811(d), '39 Code; Secs. 2035, 2038, '54 Code.)

Rev. Rul. 260, 1953–2 C.B. 262.

168.50 Social Security lump sum benefits. The lump sum payable under Title II of the Social Security Act, as amended, to the widow or widower of the deceased or to any person or persons equitably entitled thereto is not includible in the decedent's gross estate.§81.13. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 55–87, 1955–1 C.B. 112.

168.51 Split gift; consenting spouse as successor custodian for minor donee. No part of the value of individually owned securities transferred by the decedent's husband to himself as custodian for his minor daughter under the Uniform Gifts to Minors Act and held by the decedent as successor custodian at the time of her death is includible in her gross estate under section 2038 of the Code notwithstanding their election under section 2513 to treat the gift as having been made one-half by each.§20.2038–1. (Sec. 2038, '54 Code.)

Rev. Rul. 74–556, 1974–2 C.B. 300.

168.52 Stock transferred in trust. A grantor's retention of voting, disposition and investment control of stock transferred to an irrevocable inter vivos trust was not a retention of enjoyment of the transferred assets contemplated by section 2036(a) of the Code and the stock is not includible in his gross estate.§20.2036–1. (Sec. 2036, '54 Code.)

Byrum, 408 U.S. 125, Ct. D. 1954, 1972–2 C.B. 518.

168.53 Stock transferred in trust. In 1948, decedent transferred his sixty percent interest in a closely held corporation, of which he remained a director and chief executive officer until his death in 1967, to an irrevocable inter vivos trust, of which he was one of three trustees with broad management powers. *Held,* decedent did not retain enjoyment of the stock within the meaning of section 2036(a)(1) or the right to designate the persons who would enjoy the stock or the income therefrom within the meaning of section 2036(a)(2), and the value of such stock was not includible in decedent's gross estate. (Sec. 2036, '54 Code.)

Charles Gilman, 65 T.C. 296, Nonacq., 1978–2 C.B. 3.

168.54 Stock transferred in trust; retained interest. Decedent transferred stock in a closely-held corporation of which he was chief executive officer to an irrevocable trust. Trustees had the power of sale and freedom to vote the stock as they saw fit. The trustees annually granted decedent a proxy to vote the stock transferred which, together with other proxies, gave decedent voting rights over a majority of the stock of the corporation. *Held,* the grant of the proxy by the trustees was not the result of an agreement or prearranged plan and therefore decedent had retained no interest in either possession or enjoyment of the stock. (Sec. 2036, '54 Code.)

Harry H. Beckwith, 55 T.C. 242, Acq., 1971–1 C.B. 1.

168.55 Stock transferred in trust; retained interest; voting rights. An individual owned 19 shares of a closely held corporation's stock, and the individual's children owned the other 81 shares. On June 30, 1976, the individual transferred the 19 shares to a trust. The trust instrument gave the trustee sole authority to vote the shares, but at the time of the transfer, the trustee agreed to consult the transferor with respect to voting and to vote only with the transferor's consent. The transferor indirectly retained the right to vote the transferred shares, and their value is includible in the transferor's gross estate. (Secs. 318, 2036; '54 Code.)

Rev. Rul. 80–346, 1980–2 C.B. 271.

168.56 Stock transferred in trust; retained power. Prior to death, a taxpayer transferred nonvoting closely held corporate stock to a trust, retained the voting stock of the corporation, and retained control over the disposition of the nonvoting stock. The taxpayer did not retain the right to determine the income from the nonvoting stock or the persons who would enjoy the income therefrom, and the value of the nonvoting stock is not includible in the gross estate of the decedent. Rev. Rul. 67–54 revoked. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 81–15, 1981–1 C.B. 457.

168.57 Survivorship annuity; exercise of option. The exercise of an option by a decedent under a pension plan to take a reduced annuity for himself and provide a survivorship annuity for his wife does not constitute a transfer of property includible in the gross estate where the election was made prior to 10/8/49. However, where such election was made after 10/7/49, the value of the survivorship annuty is includible as a transfer taking effect at death as an exercise of a general power of appointment.§§81.17, 81.18, 81.24. (Secs. 811(c), 811(f), '39 Code; Secs. 2035, 2041, '54 Code.)

Rev. Rul. 158, 1953–2 C.B. 259.

168.58 Trust; administrative powers; fiduciary; marital deduction. Examples are provided to illustrate the principle that directions to, or power conferred upon, an executor or trustee under a will or inter vivos trust instrument or by local law (as aids in managing trusts) do not result in the disallowance or diminution of the marital deduction.§§20.2056(b)–5, 25.2523(e)–1. (Secs. 2056, 2523; '54 Code.)

Rev. Rul. 69–56, 1969–1 C.B. 224.

168.59 Trust; contingent power of decedent. If the transferor can change the trustee at will, naming himself as the new trustee, it can be a power to alter, amend or revoke, if the trustee can amend the trust in conjunction with adult beneficiaries. On the other hand, if the trustee can be replaced only in the event of death or disqualification and the transferor dies before any replacement becomes necessary, his power is not one which will result in taxability.§81.20. (Sec. 811(d), '39 Code; Sec. 2038, '54 Code.)

Rev. Rul. 55–393, 1955–1 C.B. 448.

168.60 Trust; contingent power to appoint successor trustee. The value of property transferred in trust under which the trustee determines the distribution accumulation of income and the decedent retained a life power to appoint a successor, including himself, if the trustee was unable to serve, is includible in the decedent's gross estate.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 73–21, 1973–1 C.B. 405.

168.61 Trust; contingent power to appoint successor trustee. The value of assets in an irrevocable inter vivos trust, under which the corporate trustee determines distributions of income among the grantor's children, is not includible in the grantor decedent's gross estate by reason of the grantor's retention of a life power to appoint a successor corporate trustee if the original trustee resigned or was removed by judicial process. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 77–182, 1977–1 C.B. 273.

168.62 Trust; contingent power to appoint successor trustee. A decedent created an irrevocable inter vivos trust. The trust instrument provided that the decedent might not appoint himself trustee, that the corporate trustee might distribute trust income and principal to decedent's adult children without limitation, that after the children died the remaining trust principal and undistributed income would be distributed to decedent's grandchildren, and that decedent would retain a life power to replace the corporate trustee without cause. The value of the undistributed trust principal and accumulated income is includible in the decedent's gross estate under sections 2036 and 2038. Modified by Rev. Rul. 81–51. §§20.2036–1, 20.2038–1. (Secs. 2036, 2038; '54 Code.)

Rev. Rul. 79–353, 1979–2 C.B. 325.

168.63 Trust; contingent power to appoint successor trustee. Rev. Rul 79–353, which holds that the value of property transferred to a trust is includible in the decedent-grantor's gross estate under sections 2036(a)(2) and 2038(a)(1) if the grantor retains the power to replace the trustee, will not be applied to a transfer or to an addition to a trust made before October 29, 1979, if the trust was irrevocable on October 28, 1979. Rev. Rul. 79–353 modified. §§20.2036–1, 20.2038–1, 301.7805–1. (Secs. 2036, 2038, 7805; '54 Code.)

Rev. Rul. 81–51, 1981–1 C.B. 458.

168.64 Trust; contributions with retention of power to alter. The value of property contributed by the decedent to a trust created by his wife is includible in his gross estate where the wife could not modify or revoke the trust without the consent of the decedent.§81.20. (Sec. 811(d), '39 Code; Sec. 2038, '54 Code.)

Rev. Rul. 55–683, 1955–2 C.B. 603.

168.65 Trust; exchange of retained interest. An individual transferred the retained right of income from an irrevocable trust to the individual's children in return for the children's agreement to make annuity payments of not less than the trust income or an amount certain that was less than average trust income. The fair market value of the trust corpus on the date of the individual's death is includible in the gross estate under section 2036(a) because the likelihood that the children would have to make payments from their own funds was remote and, since the decedent had received no consideration for the transfer, no part is excludible under section 2043. §§20.2036, 20.2043–1. (Secs. 2036, 2043; '54 Code.)

Rev. Rul. 79–94, 1979–1 C.B. 296.

168.66 Trust; funded life insurance; balance at death. The decedent obtained a life insurance policy, the proceeds of which were payable to the decedent's estate to the extent of the policy's cash surrender value, less any outstanding indebtedness. The balance of the proceeds was payable to the trustee of an irrevocable funded insurance trust that was created by the decedent and owned the policy and paid that portion of the annual premium that exceeded the annual increase in the cash surrender value. The decedent transferred funds to the trust to enable the trustee to pay the trust portion of the premium. The balance of the funds initially deposited that remained in the trust at the time of the decedent's death is not includible in the gross estate under section 2036. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 81–164, 1981–1 C.B. 458.

168.67 Trust; income earned and reinvested. Decedent, at age 81, created an irrevocable trust to provide for an incompetent son, who was the sole beneficiary for life. He transferred certain shares of stock to the trustee with authority to make and change investments, to distribute the trust income only for the use of the son as the trustee determined was necessary, and to accumulate in the trust all undistributed income. Decedent did not provide otherwise for this son in his will. *Held*, the transfers were made in contemplation of death and were in lieu of a testamentary distribution. Income subsequently earned and reinvested was not includible in gross estate. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

James E. Frizzell, 9 T.C. 979, Acq., 1966–1 C.B. 2.

168.68 Trust; income earned from date created. About eight years before his death, decedent created a trust and transferred to it shares of stock in a corporation planning to pay a dividend. The trust instrument provided that income be accumulated during his life and at his death distributed to his children and their descendants per stirpes. After his death, income on the trust was to be paid to his wife for life, then the principal distributed to the children and the children's descendants per stirpes. *Held*, the transfers were made in contemplation of death and were final and complete when made; therefore, income subsequently earned by the trust was not includible in the gross estate. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Jacob Gidwitz, 14 T.C. 1263, Acq., 1966–1 C.B. 2.

168.69 Trust; interest in property; undivided portion in trust. A charitable deduction is not allowable to the estate of a decedent who bequeathed the residuary estate in trust, with the spouse and a charity each entitled to half the income and, upon the spouse's death, half of the trust corpus is to be distributed to the charity and half of the trust corpus is to be distributed to the spouse's heirs.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 77–97, 1977–1 C.B. 285.

168.70 Trust; interest in property; undivided portion of trust. A ten percent interest in a trust includible in the decedent's gross estate, as augumented by the residuary estate payable into the trust, payable immediately by the trustee to a charity which under local law is entitled to receive a ten percent interest in each asset comprising trust corpus and income from the date of death to distribution is not an interest transferred in trust and is allowable as a charitable deduction. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 75–414, 1975–2 C.B. 371.

168.71 Trust; nominal settlor v. real settlor. Shortly before decedent's wife transferred in trust bonds that he had owned, they had discussed plans to establish the trust. Under the trust agreement, decedent's consent was necessary in order for his wife to alter or revoke the trust, and he was given the power to control trust investments. *Held*, decedent had made a gift of the bonds to his wife prior to the transfer and she was the real settlor, not merely a nominal settlor, of the trust. Accordingly, the value of the trust was not taxable to decedent's gross estate. (Secs. 811(c), 811(d), '39 Code; Secs. 2035, 2038, '54 Code.)

Arnold Resch, 20 T.C. 171, Acq., 1953–2 C.B. 6.

168.72 Trust; pecuniary bequest. The conditions under which the marital deduction may be allowed where, under the terms of a will or trust, an executor or trustee is empowered to satisfy a pecuniary bequest or transfer in trust to a decedent's surviving spouse with assets at their valu as finally determined for Federal estate tax purposes are set forth.§20.2056(e)-1. (Sec. 601.105, S.P.R.; Sec. 2056, '54 Code.)

Rev. Proc. 64-19, 1964-1 (Part 1) C.B. 682.

168.73 Trust; power of consent to distributions. The decedent created an irrevocable trust no part of the income or corpus of which could ever revert to him. His wife and descendants were made the beneficiaries of the trust; however, the trustees were authorized to make distributions from trust principal for the benefit of the beneficiaries in certain specific contingencies if other funds were insufficient, but only if he consented. None of the contingencies occurred during his lifetime. *Held,* he did not retain until his death an unconditional power to change, alter, or amend the trust. (Sec. 811(d), '39 Code; Sec. 2038, '54 Code.)

Frederick M. Kasch, 30 T.C. 102, Acq., 1958-2 C.B. 6.

168.74 Trust; power to accumulate or distribute income. Where a settlor, in establishing irrevocable trusts, retained sufficient powers as co-trustee to accumulate or distribute trust income to make the original trust corpus includible in his gross estate, the undistributed accumulated income, which had been transferred to corpus through the exercise of the retained powers, was also includible in his gross estate. The settlor retained until his death the right "to designate the persons who shall possess or enjoy the property or the income therefrom" and with respect to each addition to trust principal from accumulated income made a "transfer" as required by section 811(c)(1)(B)(ii) of the Code.§81.17. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

O'Malley, 383 U.S. 627, Ct. D. 1910, 1966-2 C.B. 526.

168.75 Trust; power to invade; needs of beneficiary. Decedent created an irrevocable inter vivos trust governed by the laws of New York State naming his grandson as both income beneficiary and contingent remainderman and himself as trustee with the power to invade trust corpus when it appeared that the grandson needed funds for the purpose of defraying expenses occasioned by illness, infirmity or disability or for his support, maintenance, education, welfare and happiness. *Held,* decedent did not retain rights to designate the persons who would possess or enjoy the trust property or income therefrom or power to alter, amend, revoke or terminate the trust sufficient to require inclusion of the trust in his gross estate under sections 2036(a)(2) or 2038(a)(1). (Secs. 2036, 2038; '54 Code.)

Edward E. Ford, 53 T.C. 114, Nonacq., 1978-2 C.B. 3.

168.76 Trust; power to invade corpus; special needs of beneficiary. The value of an inter vivos trust is includible in the settlor-trustee's gross estate if he was empowered to invade the corpus for unspecified "special needs" of the beneficiary, but not if the "special needs" were restricted to the beneficiary's support and education.§20.2038-1. (Sec. 2038, '54 Code.)

Rev. Rul. 73-143, 1973-1 C.B. 407.

168.77 Trust; prior transfer of contingent remainder interest. A legally binding contract was entered into prior to the death of the life tenant between the two equal testamentary trust beneficiaries of contingent remainder interests providing that, if either predeceased the life tenant, then the survivor would transfer one-half of the trust corpus received to the heirs of the deceased. Upon the death of one of the beneficiaries prior to the death of the life tenant, the contract results in a transfer for purposes of section 2037. §§20.2033-1, 20.2037-1. (Secs. 2033, 2037; '54 Code.)

Rev. Rul. 82-24, 1982-1 C.B. 134.

168.78 Trust; relinquishment of power. The decedent transferred property in 1930 to a trust created by him under which he retained a secondary right to income and also a power to amend which he relinquished in 1944. *Held,* the "transfer" occurred in 1930, not in 1944, and is, therefore, not includible in decedent's gross estate since it occurred prior to March 4, 1931. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Ellis Branson Ridgway, 33 T.C. 1000, Nonacq., 1960-2 C.B. 8.

168.79 Trust; remainder interest gratuitously assigned. A decedent's gratuitous assignment of his contingent remainder interest in a trust, reserving the right to receive the trust income for such time as he survived the principal income beneficiary, is includible in the decedent's gross estate if he did in fact survive the beneficiary.§20.2036-1. (Sec. 2036, '54 Code.)

Rev. Rul. 72-611, 1972-2 C.B. 526.

168.80 Trust; retained interest; children born or adopted after creation. The provision in a trust instrument for the inclusion of all the settlor's after-born and after-adopted children as additional beneficiaries is not the retention of a power to change the beneficial interests of the trust. §§20.2036-1, 20. 2038-1. (Secs. 2036,2038; '54 Code.)

Rev. Rul. 80-255, 1980-2 C.B. 272.

168.81 Trust; retained interest; date of transfer. In 1930, the decedent transferred in trust, securities and life insurance policies, retaining right to approve sale, surrender, or reinvestment of corpus, and to change age at which the beneficiary could receive the corpus. The decedent reserved, for life, the right to excess income from the trust, after premiums on the policies were paid. In 1943, the decedent released the retained powers. *Held,* the trust corpus was not includible in the decedent's gross estate, since the transfer took place in 1930, rather than in 1943, the date when final retained powers were surrendered. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Newcomb Carlton, 34 T.C. 988, Nonacq., 1963-1 C.B. 5.

168.82 Trust; retained interest; lower court decree. The value of trust property is not includible in the grantor-decedent's gross estate where his power to appoint himself as trustee was effectively extinguished by a lower court decision that was not appealed, even though it was inconsistent with decisions of the State's highest court.§§20.2036-1, 20.3038-1. (Secs. 2036, 2038; '54 Code.)

Rev. Rul. 73-142, 1973-1 C.B. 405.

168.83 Trust; retained interest; surviving grantor. The terms of an instrument creating an irrevocable trust reserved for the grantors the joint power to vary the interest of the beneficiaries and the character and form of the investments but were silent as to whether the power was exercisable by the surviving grantor. Under state law, the death of one holder of a joint power extinguishes the power, unless a contrary intention is evident from the instrument creating the power. None of the trust property is includible in the gross estate of the surviving grantor under section 2036(a)(2) or 2038(a)(1). If state law provides that the power survives the death of one of its holders, the value of the property transferred is includible. §§20.2036-1, 20.2038-1. (Secs. 2036, 2038; '54 Code.)

Rev. Rul. 79-177, 1979-1 C.B. 298.

168.84 Trust; reversionary interest. Only the present value of decedent's contingent right to dispose of $4,000 annually out of trust corpus, which amounted to a reversionary interest of more than five percent of the entire trust corpus, is includible in his gross estate under sections 811(c)(1)(C) and 811(c)(2) of the Code; the value of the reversionary interest in income and the value of the reversionary interest in the entire trust corpus may not be combined to meet the percentage requirement of section 811(c)(2) of the Code. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Arthur Klauber, 34 T.C. 968, Nonacq., 1964-1 (Part 1) C.B. 6.

168.85 Trust; revocable; remainder interest; reserved power. Only the value of the remainder interest is includible in decedent's gross estate where the enjoyment of the son's life estate is not subject to change through exercise of decedent's reserved power to consent to or veto trustees' power to terminate the trust.§20.2038-1. (Sec. 2038, '54 Code.)

Rev. Rul. 70-513, 1970-2 C.B. 194.

168.86 Trust; right to designate beneficiary. Interpreting a trust instrument, a state court instructed that, in the event annuities for the donors were not purchased, the trustees were authorized to make distributions to named beneficiaries, providing the donors approved and all parties involved certified in writing their opinion that the remaining trust corpus was sufficient to make certain annual payments to the donors. *Held,* the giving or withholding of the decedent donor's approval to a distribution to a beneficiary who might not be entitled thereto until the claim of the donor was satisfied is not the exercise of a right to designate the persons who shall possess or enjoy the property or the income therefrom. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Maria Becklenberg, 31 T.C. 402, Acq., 1959-2 C.B. 3.

168.87 Trust; right to govern enjoyment retained. The decedent-trustor established three inter vivos trusts, providing income from transferred securities to be paid to beneficiaries for life with remainders over to remaindermen. The trustee, during the lifetime of the decedent, could exercise the broad powers only as and when the decedent directed. *Held,* the decedent was in effect a fiduciary and was not at liberty, by reason of state law, to administer the trust for his own benefit or to ignore the rights of the beneficiaries. The trust property was not includible in the decedent's gross estate due to retention of a right to designate who shall enjoy the property. (Secs. 2036, 2038; '54 Code.)

Willard V. King, 37 T.C. 973, Nonacq., 1963-1 C.B. 5.

168.88 Trust; right to specified annuity income. Where the decedent transferred substantially all of his property into a trust account for the benefit of his children, reserving the right to withdraw from the income or the principal, if necessary, a specified annuity or an amount equal to his living expenses, the transfer was not a bona fide sale for adequate and full consideration in money or money's worth, and the value of the property transferred is includible in his gross estate.§81.18. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 55-378, 1955-1 C.B. 447.

168.89 Trust; rights in land; remainder interest to charity. To establish that a devise in trust of a remainder interest in both surface and subsurface rights in land would qualify for a charitable deduction, where a will failed to provide for withholding and adding to corpus such reserves for depletion of subsurface resources as would be considered adequate to maintain the corpus of the trust intact, it must be shown there is a charitable interest which is not contingent or defeasible.§§20.2031-7, 20.2055-2. (Secs. 2031, 2055; '54 Code.)

Rev. Rul. 60-162, 1960-1 C.B. 376.

168.90 Trust; securities and life insurance policies. The decedent was assigned certain life insurance policies by her husband. On June 4, 1932, decedent created an irrevocable trust and transferred to it all the insurance policies along with separate stock powers covering securities. The decedent died on March 11, 1954. *Held,* the value of the insurance policies and the value of the securities required to produce income sufficient to pay premiums thereon, comprising part of the corpus of the trust created on June 4, 1932, are not includible in the decedent's gross estate. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Lena R. Arents, 34 T.C. 274, Nonacq., 1961–2 C.B. 6.

168.91 Trust; valuation of assets. The amount includible in the decedent's gross estate on account of property she had transferred to a trust created by her husband for their daughter's benefit, over which the decedent held discretionary powers as trustee, is not the percentage of the value of the corpus represented by decedent's contribution immediately after the contribution was made as applied to the value of the total corpus on the valuation date. The value of assets identified as attributable to the husband's contributions must be excluded from the computation. (Sec. 2038, '54 Code.)

Nathalie F. Bell, 66 T.C. 729, Acq., 1977–2 C.B. 1.

168.92 Trust; valuation of assets with retained interest. The retained interest to be included in the estate of a life income beneficiary of a testamentary trust, to which the beneficiary had made contributions of stock that remained in the trust at death, at which time the value of the stock could be easily ascertained, is the value of the stock at the time of death.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 78–74, 1978–1 C.B. 287.

168.93 Within 3 years of death. Decedent, who died at the age of 89, had received a large estate upon her husband's death when she was 63. Six years later, after she was defrauded out of $100,000, she was persuaded to place the bulk of her assets in an irrevocable trust, reserving a life estate to herself with remainder to her children. During the last three years of her life she made cash gifts to her daughter that included a regular $100 a month allowance, birthday gifts of $1,000 each, Christmas gifts of [illegible]00 each, miscellaneous gifts totaling $2,557, and $42,268 toward construction of a house. *Held,* the decedent's motives were connected with life, and neither the transfer in trust nor the gifts to her daughter was made in contemplation of death. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Charlotte A. Hopper, 22 T.C. 138, Acq., 1954–2 C.B. 4.

168.94 Within 3 years of death; business agreement. For 15 years preceding his death, the decedent gave an aggregate of nearly half the stock of his wholly owned corporation to his son-in-law, a corporate officer and employee. The stockholders then created a voting trust allowing the decedent to give more control to his son-in-law pursuant to an agreement between them. Although chronically ill for several years prior to his death, the decedent maintained a positive attitude toward the future and remained active in the business. *Held,* the transfers of voting trust certificates for the three years preceding the date of death were not made in contemplation of death. (Secs. 2031, 2035, 2512; '54 Code.)

Louis Zaiger, 64 T.C. 927, Acq., 1976–1 C.B. 1.

168.95 Within 3 years of death; date of gift. Decedent and his wife conveyed properties to two daughters and their husbands in 1951 and 1952. In 1953, the daughters and husbands executed notes and mortgages on the properties in favor of decedent and his wife, who executed releases of the mortgages and turned them over to an attorney to be recorded upon the death of either or both of them. Prior to his death in 1956, decedent and his wife executed and recorded new releases of the mortgages. *Held,* the notes and mortgages released by the satisfactions of mortgage did not represent valid indebtedness and that the gifts, having actually been made when the properties were transferred in 1951 and 1952, were not in contemplation of death. (Sec. 2035, '54 Code.)

Carl C. Lynch, 35 T.C. 142, Acq., 1961–2 C.B. 5.

168.96 Within 3 years of death; gift tax. The gift tax paid by the decedent on a gift made within 3 years of death is includible in the gross estate under section 2035(c) even though the gift is also includible under another section. §20.2036–1. (Secs. 2035, 2036; '54 Code.)

Rev. Rul. 81–229, 1981–2 C.B. 176.

168.97 Within 3 years of death; gift tax paid by donee. A decedent's estate is entitled to a credit for gift taxes paid by the donee, decedent's son, on a gift later included in decedent's gross estate as a transfer made in contemplation of death.§20.2012–1. (Sec. 2012, '54 Code.)

Rev. Rul. 74–363, 1974–2 C.B. 290.

168.98 Within 3 years of death; gift tax paid by husband and wife. Prior to his death, decedent and his wife transferred to a trust property owned by them as tenants by the entirety, but for which the wife contributed no part of the cost of acquisition. Decedent and his wife retained a life interest in a portion of the trust income and their children were beneficiaries to the balance of the life interest and the remainder. Upon the husband's death within two years of the transfer, the value of the property transferred was included in his gross estate as a gift in contemplation of death. A credit was claimed for the entire gift tax paid with respect to the transfer which was paid in part by the decedent and in part by the wife. *Held,* the decedent's estate is entitled to the entire credit notwithstanding that a portion of the gift tax was paid by the wife. (Sec. 2012, '54 Code.)

William MacPherson Hornor, 44 B.T.A. 1136, Nonacq. withdrawn and Acq. substituted, 1974–2 C.B. 3.

168.99 Within 3 years of death; income tax savings. The Tax Court held, on the facts, that gifts made while the decedent was unaware of any illness and on advice that she would thus save income taxes, were not made in contemplation of death. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

May Hicks Sheldon, 27 T.C. 194, Acq., 1957–2 C.B. 6.

168.100 Within 3 years of death; intrafamily loan. When an individual transfers cash to the individual's child within 3 years of death in exchange for a term promissory note having a fair market value less than the amount of the transferred cash, the amount includible is the difference between the amount of the loan and the fair market value of the note on the date of the gift. §§20.2033–1, 20.2043–1, 25.2512–8. (Secs. 2033, 2035, 2043, 2512; '54 Code.)

Rev. Rul. 81–286, 1981–2 C.B. 177.

168.101 Within 3 years of death; joint checking account. All cash receipts, including receipts from jointly held rental property, were deposited into a joint checking account managed by the decedent's wife from which she, without his knowledge, transferred and deposited to her separate savings accounts funds she considered to be her own. *Held,* the transfers made within three years of the decedent's death were not made in contemplation of death. (Secs. 2031, 2035, 2512; '54 Code.)

Louis Zaiger, 64 T.C. 927, Acq. in result, 1976–1 C.B. 1.

168.102 Within 3 years of death; joint savings account; date of gift. In July 1963, the decedent deposited funds in a joint bank account with her daughter. Decedent gave her daughter the passbook and told her that she could use the money and enjoy it. The daughter kept the passbook in her possession and did not deposit or withdraw any funds until February 2, 1965, prior to the date of decedent's death on February 12, 1965. *Held,* the donor's motives must be determined on the day the joint account was opened and at that time the transfer was not made in contemplation of death. (Sec. 2035, '54 Code.)

Harley A. Wilson, 56 T.C. 579, Acq. in result, 1972–1 C.B. 2.

168.103 Within 3 years of death; joint savings account; date of gift. The decedent, in good health at the time, deposited funds into a joint bank account with a child who was given the passbook and told to use the money. The child made no deposits or withdrawals until the decedent was in a state of declining health at which time funds were withdrawn without the decedent's knowledge. *Held,* the transfer was not in contemplation of death; the donor's motives must be determined on the day the joint account was opened, not the day of withdrawal. (Sec. 2035, '54 Code.)

Harley A. Wilson, 56 T.C. 579, Nonacq., 1976–2 C.B. 4; Marguerite M. Green, 64 T.C. 1049, Acq. in result, 1976–2 C.B. 2.

168.104 Within 3 years of death; joint tenancy; qualified interests. No portion of the value of real property purchased by one spouse more than three years before death and held by the spouses in joint tenancy is included in the purchaser's gross estate under section 2035 where qualified joint interests are created in that property within three years of the purchaser's death. §§23.1, 25.2515–1. (Secs. 2035, 2040, 2515; '54 Code.)

Rev. Rul. 82–159, 1982–2 C.B. 210.

168.105 Within 3 years of death; life motive. The decedent, who died at the age of 82, had been bedridden and attended by day and night nurses for more than four years prior to her death. On the day before the transfer in question, the decedent had suffered a severe heart attack from which she died about a month later. However, the Tax Court found as a fact that she had intended to make the transfer in trust for a period of over ten years but had hesitated on the advice of the beneficiaries. Under the circumstances, it was held that the life motive remained dominant even after the heart attack and the transfer was not made in contemplation of death. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Brigid Angela Casey, 25 T.C. 707, Acq., 1957–2 C.B. 4.

168.106 Within 3 years of death; life motive. The decedent owned valuable land which she sold in 1952. She gave part of the proceeds from the sale to her children, grandchildren, and a daughter-in-law. The decedent was 87 years old and in good health at the time the gifts were made. The decedent died in 1953 from cancer of which she was unaware at the time the gifts were made. *Held,* the dominant motive of the decedent in making the gifts was her desire to see the recipients of the gifts enjoy them during her lifetime. Consequently, they were not made in contemplation of death. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Maggie M. Holding, 30 T.C. 988, Acq., 1958–2 C.B. 6.

168.107 Within 3 years of death; pre-1977. A transfer that was made within three years of death, without consideration, and in contemplation of death before January 1, 1977, by a decedent who died after December 31, 1976, is includible in the decedent's gross estate under section 2035. §20.2035–1. (Sec. 2035, '54 Code.)

Rev. Rul. 79–212, 1979–2 C.B. 325.

168.108 Within 3 years of death; reversionary interest. In 1975, decedent transferred, in contemplation of death, a reversionary interest in trust property, the value of which was more than 5 percent of the trust property. Immediately before decedent's death in 1976, however, the value of the reversionary interest was less than 5 percent of the value of the trust property. None of the property is includible in decedent's gross estate under section 2035. §§20.2035–1, 20.2037–1. (Secs. 2035, 2037; '54 Code.)

Rev. Rul. 79–62, 1979–1 C.B. 295.

168.109 Within 3 years of death; split gift. If a decedent's spouse dies after the decedent, and a gift that the decedent consented to split is includible in the spouse's estate, the decedent's estate is entitled to recompute its tax. §25.2513–1. (Secs. 2001, 2035, 2512; '54 Code.)

Rev. Rul. 81–85, 1981–1 C.B. 452.

168.110 Within 3 years of death; split gift. Under section 2001(b)(1), no portion of a split gift represents an adjusted taxable gift in the estate of a non-donor spouse, where both spouses die within three years of the transfer, the donor-spouse predeceases the non-donor spouse, and the gift is included in the gross estate of the donor-spouse under section 2035. §25.2513–1. (Secs. 2001, 2035, 2513; '54 Code.)

Rev. Rul. 82–198, 1982–2 C.B. 206.

168.111 Within 3 years of death; stock dividend declared during transferee's ownership. Prior to death a decedent gratuitously transferred 500 shares of stock in a publicly traded corporation to an individual. After the transfer, the corporation declared a stock dividend of one share for every two shares owned, giving the individual 750 shares. The decedent died during the next year. The fair market value of the 750 shares of stock is includible in the decedent's gross estate. §20.2035–1. (Sec. 2035, '54 Code.)

Rev. Rul. 80–336, 1980–2 C.B. 271.

168.112 Within 3 years of death; tenants by entirety. One-half the value of real property held by a married couple as tenants by the entirety and subsequently transferred to a third party in contemplation of the death of one of the spouses, in a state whose law provides that a tenancy by the entirety cannot be severed by either spouse acting alone and that each spouse is entitled to one-half the income from such property, is includible in the estate of the deceased spouse, even though the other spouse had purchased the property with separate funds and had elected not to report a gift at the time they took title to the property. Amplified by Rev. Rul. 81–227. §20.2035–1. (Sec. 2035, '54 Code.)

Rev. Rul. 76–348, 1976–2 C.B. 267.

168.113 Within 3 years of death; tenants by entirety. When the decedent and the decedent's spouse transfer joint tenancy property, as to which there was no election under section 2515(c), within 3 years of the decedent's death, one-half of the value of the property is includible in the decedent's gross estate under section 2035 and the other one-half of the value is reflected in the estate tax computation as an adjusted taxable gift under section 2001. Rev. Rul. 76–348 amplified. §25.2515–1. (Secs. 2001, 2035, 2515; '54 Code.)

Rev. Rul. 81–227, 1981–2 C.B. 168.

168.114 Within 3 years of death; valuation. The value of property includible in the gross estate as a result of a transfer in contemplation of death is the fair market value of the property actually transferred as of the decedent's death, not the value of whatever substitute property that may be held by the donee at that time.§20.2035–1. (Sec. 2035, '54 Code.)

Rev. Rul. 72–282, 1972–1 C.B. 306.

168.115 Within 3 years of death; valuation; encumbered by transferee. The value of real property transferred by a decedent in contemplation of death, and subsequently mortgaged by the transferee as security for a loan that did not benefit the decedent, is includible in the decedent's gross estate without reduction for the amount of the unpaid mortgage. §§20.2035–1, 20.2053–7. (Secs. 2035, 2053; '54 Code.)

Rev. Rul. 76–235, 1976–1 C.B. 277.

168.116 Within 3 years of death; valuation; stock of closely held corporation. An individual who owned a controlling stock interest in a closely held corporation transferred a minority stock interest that was included in the individual's gross estate as a transfer in contemplation of death. The minority interest transferred and the stock retained by the individual until death are treated as one block of shares in determining the value of the stock interest includible in the gross estate. §§20.2031–1, 20.2035–1. (Secs. 2031, 2035; '54 Code.)

Rev. Rul. 79–7, 1979–1 C.B. 294.

Trusts

170.1 Administrative powers; marital deduction. An interest passing in trust may qualify for the marital deduction despite provisions granting to the trustees administrative powers, including the power to determine the allocation of receipts and disbursements between income and corpus, if the local law applicable to the administration of the trust places reasonable limitations on the exercise of such powers.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 66-39, 1966–1 C.B. 223.

170.2 Beneficiary of living trust; liability. The beneficiary of a living trust created in 1941 by the deceased was not personally liable under section 900 of the 1939 Code for the decedent settlor's estate tax assessed in 1956 on that trust, for she did not qualify as a "transferee" or "beneficiary" as provided in section 827(b) of the 1939 Code. The classes of individuals in section 827(b) are described under section 811 of the 1939 Code, which provides a "transferee" must receive the transfer in contemplation of the decedent's death, and a "beneficiary" pertains solely to beneficiaries of insurance proceeds, neither of which described this petitioner. The court also rejected an interpretation of section 827(b) to render the trust beneficiary a "transferee of a transferee." (Secs. 811, 827(b), 900, '39 Code; Secs. 2055, 6324, 6901, '54 Code.)

Patricia B. Englert, 32 T.C. 1008, Acq., 1960–1 C.B. 4.

170.3 Charitable; bequest in trust for students. A bequest in trust for the benefit of students enrolled in a particular school as of a particular date is not deductible as a bequest for educational purposes unless the will can be construed as creating a trust for educational purposes for the benefit of a general class, as distinguished from mere benevolence. (Sec. 812(d) '39 Code; Sec. 2055, '54 Code.)

Rev. Rul. 57–449, 1957–2 C.B. 622; Harley J. Davis, 26 T.C. 549, Acq., 1957–2 C.B. 3.

170.4 Charitable; care of homeless animals. A bequest to trustees, to use and apply the income and principal of the trust estate for the care of neglected or homeless domestic animals constitutes a bequest to trustees for charitable purposes, and the value thereof is deductible from the decedent's gross estate. (Sec. 2055, '54 Code.)

Rev. Rul. 55–519, 1955–2 C.B. 386.

170.5 Charitable remainder; annuity interest. No charitable deduction is allowable for the value of an annuity interest passing to a qualified charity upon the death of each of three individual recipients under a charitable remainder annuity trust that provides an annuity to the decedent's spouse for life and at the spouse's death to the individuals. The value of the charitable remainder interest, however, is deductible. §20.2055–2. (Sec. 2055 '54 Code.)

Rev. Rul. 76–225, 1976–1 C.B. 281.

170.6 Charitable remainder; ascertainable interest. Disclaimers by the life beneficiaries of New York pre-1969 testamentary charitable remainder trusts, releasing their rights to have the trustees' broad administrative and investment power exercised in a manner that would result in receipt of income in excess of that to which they would have received under State law had the powers not been granted and disclaiming such amounts, were valid under State law and therefore were effective to render the value of the trust remainder ascertainable for purposes of the charitable deduction. (Sec. 2055, '54 Code.)

Harry C. Jaeker, 58 T.C. 166, Acq. in result, 1974–1 C.B. 2.

170.7 Charitable remainder; capital gains distributions from mutual funds. Where an irrevocable trust provides that capital gain dividends received from stock in regulated investment companies shall be held for the charitable remainderman rather than distributed to the noncharitable life tenant, the present worth of the remainder interest is deductible and may be valued by the use of the appropriate actuarial remainder table. However, where such capital gain dividends are treated as income and paid to the life tenant, the charitable interest is not severable since no formula is available for ascertaining its value and no charitable deduction is allowable. Rev. Rul. 55–620 revoked. Supplemented by Rev. Rul. 67–33.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 60–385, 1960–2 C.B. 77.

170.8 Charitable remainder; capital gains distributions from mutual funds. Where local law authorizes a trustee to invest corpus in the stock of regulated invested companies and to pay out capital gains distributions therefrom as income under the general provisions of the governing instrument, a deduction is not allowable with respect to a charitable remainder interest as the charitable interest is not severable from the noncharitable interest. This ruling will not be applied with respect to transfers completed prior to May 1, 1967, or, under certain circumstances, to transfers made under instruments executed prior to that date. Rev. Rul. 60–385 supplemented.§§20.2055–2, 25.2522(a)–2, 301.7805–1. (Secs. 170, 2055, 2522, 7805; '54 Code.)

Rev. Rul. 67–33, 1967–1 C.B. 62.

170.9 Charitable remainder; care of pet animal. The deductibility of a bequest to a charitable institution subject to an otherwise qualifying charitable remainder annuity trust that provides care for a pet animal during its lifetime is discussed with respect to the treatment of the trust provisions under the laws of three different states.§§1.664-2, 20.2055-2. (Secs. 664, 2055; '54 Code.)

Rev. Rul. 78-105, 1978-1 C.B. 295.

170.10 Charitable remainder; contingent on children surviving. A deduction is not allowable for a charitable trust remainder where the life tenant is the decedent's 56 year old son who had neither natural nor adopted children at decedent's death and payment to the charity is contingent upon the life tenant's death without surviving children.§20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 71-442, 1971-2 C.B. 336.

170.11 Charitable remainder; corpus distribution; limitation. A charitable deduction is not allowed for a remainder interest in a testamentary trust where the corpus may be distributed to any tax-free organization under the income, estate, gift or inheritance tax laws of the U.S. or of any state having jurisdiction over the trust.§20.2055-1. (Sec. 2055; '54 Code.)

Rev. Rul. 71-200, 1971-1 C.B. 272.

170.12 Charitable remainder; corpus subject to invasion. The decedent's will provided for the payment out of the income of a testamentary trust having a corpus of $600,000 of an annuity of $5,000 a year for life to the decedent's 78-year old brother. The trustees were authorized to apply any part of the trust income or principal "to take care of any emergency, illness, or necessity" of the brother. Two charities named in the will were to receive the balance of the trust income during the brother's life and the remainder of the trust estate after the brother's death. *Held,* only the bequest of the remainder interests were deductible. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Oliver Lee, 28 T.C. 1259, Acq., 1958-2 C.B. 6.

170.13 Charitable remainder; death after October 9, 1972. The estate of a decedent who died after October 9, 1972, is not entitled to a charitable deduction for amounts bequeathed to a charitable remainder trust that does not qualify as a charitable remainder annuity trust or a charitable remainder unitrust under section 664 or a pooled income fund under section 642(c)(5), even though the estate of the decedent's spouse, who died prior to October 9, 1972, was entitled to a charitable deduction for amounts bequeathed to the same trust. §20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 76-198, 1976-1 C.B. 280.

170.14 Charitable remainder; death of donee; state inheritance. A decedent's will created a trust giving an individual a lifetime income interest and a testamentary general power of appointment over the corpus. Failure to exercise the power of appointment would cause the trust corpus to pass to a charity described in section 2055(a). State law exempts property passing to such charities from inheritance taxes and taxes the estate of the creator of a power of appointment upon the exercise of power. A charitable deduction for the residue of the estate passing to the same charity is not reduced by the hypothetical state inheritance taxes that would be imposed upon the exercise of the power, if the donee of the power dies before exercising the power and before the due date for filing the estate tax return. §20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 80-66, 1980-1 C.B. 204.

170.15 Charitable remainder; death of income beneficiary. A charitable deduction is allowable for the value of a charitable remainder interest in a split-interest trust, which did not meet the requirements of section 2055(e)(2)(A) and was not amended or conformed to meet that section, that passed directly to the charity upon the death of the noncharitable income beneficiary prior to the due date of the decedent's estate tax return. Clarified by Rev. Rul. 82-97. §20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 76-545, 1976-2 C.B. 289.

170.16 Charitable remainder; death of income beneficiary; judicial reformation. Where judicial reformation of a testamentary charitable remainder trust is initiated after the life beneficiary's death and before the due date of the testator's return, the amount of the charitable deduction allowable under section 2055(a) is determined as if the trust provided for a 6 percent annuity. Rev. Rul. 76-545 clarified. §20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 82-97, 1982-1 C.B. 138.

170.17 Charitable remainder; death of income beneficiary as disclaimer of interest. The death of the life beneficiary of a charitable remainder unitrust, before the due date of the decedent-grantor's estate tax return and before any distributions have been made, is not equivalent to a disclaimer of such interest or a termination of a power to consume or invade the property for purposes of section 2055(a). §20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 76-546, 1976-2 C.B. 290.

170.18 Charitable remainder; death of successive life tenants. The amount determined as the present value of the remainder interest in a testamentary trust passing to charity following the death of successive life tenants is allowable as a charitable deduction. The manner of determining the present value of the remainder interest is explained.§20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 68-270, 1968-1 C.B. 407.

170.19 Charitable remainder; deduction. A trust does not qualify as a charitable remainder trust and no deduction is allowable under sections 170 and 2522 if it is possible that federal estate and state death taxes may be payable from the trust assets. However, a trust will qualify as a charitable remainder trust and a deduction is allowable under sections 170 and 2522 if a secondary life beneficiary furnishes the funds for the payment of any death taxes for which the trust may be liable. §§20.2036-1, 25.2522(c)-3, 301.7805-1. (Secs. 170, 664, 2036, 2522, 7805; '54 Code.)

Rev. Rul. 82-128, 1982-2 C.B. 71.

170.20 Charitable remainder; governing instrument; requirements. In order for the charitable interest in a testamentary charitable remainder trust to qualify for an estate tax charitable deduction, the governing instrument of the trust must provide that the obligation to pay the unitrust or annuity amount begins on the date of death, and for corrective payments in the case of an underpayment or overpayment of the amount determined to be payable. Rev. Rul. 72-395 modified. §§20.2055-2, 301.7805-1. (Secs. 664, 2055, 7805; '54 Code.)

Rev. Rul. 80-123, 1980-1 C.B. 205.

170.21 Charitable remainder; interest-free notes renewed without adequate security. A bequest in trust otherwise deductible under section 2055(a)(3) is not allowable by virtue of section 2055(e) of the Code where the decedent's son's interest-free notes are renewed, without adequate security, by the trustee in the year of transfer of the bequest.§20.2055-4. (Sec. 2055, '54 Code.)

Rev. Rul. 70-451, 1970-2 C.B. 196.

170.22 Charitable remainder; invasion of corpus. A charitable deduction may be allowed for bequests or gifts of remainder interest in a trust in cases where the will or instrument authorizes invasion of corpus for the comfortable maintenance and support of life beneficiaries if there is an ascertainable standard covering comfort and support and the probability of invasion is remote or the extent of the invasion is calculable.§81.44. (Sec. 812(d), '39 Code; Sec. 2055, '54 Code.)

Rev. Rul. 54-285, 1954-2 C.B. 302.

170.23 Charitable remainder; invasion of corpus. A charitable deduction is not allowed for the value of a remainder interest in a testamentary trust where the corpus is subject to invasion on behalf of a life beneficiary and to contingent bequests to noncharitable benficiaries.§20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 68-336, 1968-1 C.B. 408.

170.24 Charitable remainder; invasion of corpus. A charitable deduction is not allowed for the value of a remainder interest in a testamentary trust where the corpus may be used to pay all taxes imposed on the trust or on the interest of any trust beneficiary.§20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 71-221, 1971-1 C.B. 274.

170.25 Charitable remainder; invasion of corpus. Decedent, who died in 1967, bequeathed charitable remainder interests to six charities upon termination of a testamentary trust. Under terms of the will the beneficiaries were given lifetime income interests in the trust which were payable in fixed amounts. The will further provided that if a beneficiary is incompetent at the time assets are to be distributed to him, the trustee, at his discretion, may continue to hold such assets in trust for such beneficiary. The trustee may expend for the care, support, etc., of such beneficiary such amounts of the income and principal thereof as he deems advisable. *Held,* under the wording of the will the trustee does not have authority to invade the trust corpus. The claimed charitable deduction is ascertainable by actuarial computations and is allowable. (Sec. 2055, '54 Code.)

Richard F. O'Brien, Jr., 57 T.C. 27, Acq., 1972-1 C.B. 2.

170.26 Charitable remainder; invasion of corpus. Discretionary powers over trust income and principal held by the trustees of a testamentary trust the income from which was payable to decedent's son for life, with the remainder payable to charity, were subject to certain limits under New York state law and therefore did not constitute a power of indirect invasion of corpus, and the value of the charitable remainder was ascertainable and deductible. (Sec. 2055, '54 Code.)

Abraham Simonson, 59 T.C. 535, Nonacq., 1978-1 C.B. 3.

170.27 Charitable remainder; invasion of corpus. The fact that a trustee under a testamentary trust had certain discretionary powers with respect to investments, payment of enumerated obligations, and allocation of receipts between income and principal did not cause a charitable remainder to be unascertainable for purposes of reg. 20.2055-2(a), and the value of the remainder was properly calculated without reduction for the value of property interests passing to the surviving spouse as the result of an election to take under the will in lieu of community property interests. (Sec. 2055, '54 Code.)

Mose Sumner, 59 T.C. 837, Nonacq., 1978-2 C.B. 4.

170.28 Charitable remainder; invasion of corpus; disclaimer. The value of a charitable trust remainder is deductible from the gross estate, prior to the Tax Reform Act of 1969, when the income beneficiary's interest in the corpus has been disclaimed in a court enforced timely agreement between the beneficiary and the trustee.§20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 71-483, 1971-2 C.B. 337.

170.29 Charitable remainder; invasion of corpus; in favor of widow. Charitable bequests from the corpus of a testamentary trust are not deductible where the corpus may be used in whole or in part for the comfort, support, maintenance, and/or happiness of a testator's wife. E.T. 12 superseded.§20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 67–279, 1967–2 C.B. 333.

170.30 Charitable remainder; invasion of corpus; unforeseen occurences. A charitable deduction is not allowable for a charitable remainder trust where the trustee's power to invade corpus for unforeseen occurences in addition to a limited power, creates an indefinite and immeasurable standard of invasion for life tenants.§20.2055–1. (Sec. 2055, '54 Code.)

Rev. Rul. 70–450, 1970–2 C.B. 195.

170.31 Charitable remainder; post-1972 amendment by trustee. A charitable remainder trust executed before 1973, whose governing instrument was amended in 1975 by the trustee as provided by section 2055(e)(3) of the Code after the grantor's death earlier that year, may qualify as a charitable remainder unitrust, even though the amended instrument does not contain certain mandatory provisions which were suspended in certain cases by section 1.664–1(g)(2) of the regulations and a deduction for the remainder interest is not disallowed. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–370, 1976–2 C.B. 286.

170.32 Chartiable remainder; power of appointment; division of assets. Decedent was the beneficiary of a testamentary trust established under the will of her predeceased husband. The trust gave the decedent a power of appointment over the corpus of the property and provided that upon the death of the decedent, noncharitable beneficiaries would receive life income interest equal to 60% of the trust income and a charitable organization would receive an income interest equal to 40% of the trust income. After decedent's death, the trustee was informed that the estate would not be entitled to a charitable deduction under section 2055(a) of the Code because the trust did not comply with the restrictions contained in section 2055(e). The trustee, pursuant to specific authority in the trust instrument, segregated 40% of the trust assets and held this portion exclusively for the benefit of the charitable organization. *Held*, a wholly charitable trust was created for the purposes of section 2055(e)(3) and the estate is entitled to a charitable deduction for the value of the 40% portion. (Sec. 2055, '54 Code.)

Nancy F. Crafts, 74 T.C. 1439, Acq. in result, 1981–2 C.B. 1.

170.33 Charitable remainder; power to transfer to noncharitable parties. No deduction is allowable under section 2055 of the Code, prior to the Tax Reform Act of 1969, Pub.L. 91–172, where the trustee life-income beneficiary's power to terminate all or part of the trust could terminate both her own interest and charity's remainder interest.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 71–6, 1971–1 C.B. 273.

170.34 Charitable remainder; private annuitant; valuation. The portion of a charitable remainder trust includible in the decedent-grantor's gross estate, where the decedent is the private annuitant, is that portion of trust corpus necessary to yield the private annuity payment, assuming a 6 percent return. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 82–105, 1982–1 C.B. 133.

170.35 Charitable remainder; probability of transfer. A charitable remainder interest in an irrevocable trust subject to invasion to make fixed payments to the life tenant is not deductible where the probability that the transfer will not occur is greater than five percent.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 70–452, 1970–2 C.B. 199.

170.36 Charitable remainder; probability of transfer; amendment. No deduction is allowable under section 2055 for a charitable remainder trust that, pursuant to the provisions of section 2055(e)(3), was amended and reformed to meet the conditions of section 20.2055–2(b)(1) of the regulations requiring that only a negligible chance exist that the charitable transfer will not become effective.§20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 77–374, 1977–2 C.B. 329.

170.37 Charitable remainder; probability of transfer; contingent bequest. A charitable deduction is allowed for the present value of the charitable remainder interest in a contingent preresiduary bequest to a relative that is to be transferred as a part of the residue to a qualifying charitable remainder unitrust upon the survival of the spouse of the decedent for 30 days, the non-occurrance of which is considered negligible. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 78–255, 1978–1 C.B. 294.

170.38 Charitable remainder; reformation by court. A charitable remainder testamentary trust not meeting the requirements of section 2055(e)(2)(A), created by a will executed in March 1974, and reformed by a probate court to convert the life beneficiary's income interest to a life annuity and to pay over the remaining funds to the named charity after administration of the estate will not meet the requirements of section 2055(e)(3). §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–17, 1976–1 C.B. 279.

170.39 Charitable remainder; split-interest; power of appointment. The estate of a decedent who executed a will and died after 1969 is not entitled to a charitable deduction for a remainder interest in a split-interest trust that was created under the will of a testator who died before 1970, granted the decedent a power of appointment, which the decedent failed to exercise, and provided, upon failure of the decedent to exercise the power, for a life estate to another party with the remainder payable to a charitable organization. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 76–504, 1976–2 C.B. 286.

170.40 Charitable remainder; subject to power of invasion. A decedent's bequest of his residuary estate to charitable organizations, after specified monthly payments to be made to his widow during the predictable period his estate would be administered, results in an ascertainable amount allowable as a deduction under section 2055 of the Code. Section 201 of the Tax Reform Act of 1969 does not apply in this instance as the will was executed before Oct. 9, 1969, and the testator died before Oct. 9, 1972. Clarified by Rev. Rul. 83–20. §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 74–97, 1974–1 C.B. 281.

170.41 Charitable remainder; unitrust. The transfer of property to a charitable remainder unitrust, the trustee and remainder beneficiary of which was an organization described in sections 170(c) and 2522 at the time of the transfer, will qualify for the gift tax deduction even though the governing instrument of the trust limits ultimate distribution to organizations described in section 170(c) and there exists the remote possibility the charitable remainderman would not qualify under sections 170(c) and 2522 upon termination of the trust. A charitable deduction to the donor's estate will depend on qualification of the charitable remainderman under section 2055 at the date of the donor's death. §§20.2055–2, 20.2106–1, 25.2522(a)–1. (Secs. 170, 664, 2055, 2106, 2522; '54 Code.)

Rev. Rul. 76–307, 1976–2 C.B. 56.

170.42 Charitable remainder or income; split-interest; value. Expanded guidelines are provided for settling cases governed by section 2055 of the Code prior to the Tax Reform Act of 1969 involving a charitable deduction for an income or remainder interest in a split-interest trust whose trustee is permitted to exercise administrative or investment powers that may render the value of the interest in the trust unascertainable. Rev. Proc. 73–9 superseded.§20.2055–2. (Sec. 601.105, S.P.R.; Sec. 2055, '54 Code.)

Rev. Proc. 74–6, 1974–1 C.B. 417.

170.43 Common trust funds; valuation date; fair market value. Guidelines are provided for the determination of the fair market value of participating interests in the common trust fund between the bank valuation dates for purposes of sections 2031, 2032 and 2512. A formula is provided for valuing participating interests in the common trust funds when the valuation date for estate and gift tax purposes does not coincide with the bank valuation date. §§20.2031–2, 20.2032–1, 25.2512–1. (Sec. 601.105, S.P.R.; Secs. 584, 2031, 2032, 2512, '54 Code.)

Rev. Proc. 84–17, 1984–1 C.B. 432.

170.44 Contributions with retention of power to alter. The value of property contributed by the decedent to a trust created by his wife is includible in his gross estate where the wife could not modify or revoke the trust without the consent of the decedent.§81.20. (Sec. 811(d), '39 Code; Sec. 2038, '54 Code.)

Rev. Rul. 55–683, 1955–2 C.B. 603.

170.45 Discharge from personal liability. Where an executor of a decedent's estate has been duly appointed and acting as such, the trustees of an inter vivos trust created by the decedent, the assets of which were included in his gross estate, are not entitled to a certificate of discharge from personal liability. (Sec. 2204, '54 Code.)

Rev. Rul. 57–424, 1957–2 C.B. 623.

170.46 Established with life insurance proceeds. The value of trust corpus established with proceeds of insurance on the life of decedent's predeceased husband is not includible in her estate where the insurer consents to a court authorized lump-sum distribution in lieu of monthly payments.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 70–84, 1970–1 C.B. 188.

170.47 "Estate trust"; marital deduction. A bequest in trust qualifies for the marital deduction even though the trustee may accumulate the income during the surviving spouse's lifetime and retain unproductive property as part of the trust corpus, since the corpus and any accumulated income is to be paid to the estate of the spouse upon her death.§20.2056(a)–1. (Sec. 2056, '54 Code.)

Rev. Rul. 68–554, 1968–2 C.B. 412.

170.48 "Estate trust"; marital deduction. Under a will providing for both a marital deduction trust and a residuary trust, and granting to the trustees the power to invest trust principal in non-income-producing life insurance, a clause providing that any power given to the trustees is void if the power jeopardizes the marital deduction does not require disallowance of the marital deduction and the power to invest in life insurance is only applicable to the residuary trust. Rev. Rul. 65–144 distinguished. §20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 75–440, 1975-2 C.B. 372.

170.49 "Estate trust"; marital deduction. No deduction is allowable with respect to an otherwise qualifying marital deduction trust the income from which is to be used to accumulate $40,000 for the education of the decedent's grandchildren before any amounts are paid to the surviving spouse.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 77–444, 1977–2 C.B. 341.

170.50 "Estate trust" with "power of appointment trust"; marital deduction. A decedent bequeathed to his wife a life income interest in a trust with a provision that on her death the corpus would be distributed to her executor or administrator to the extent necessary to pay the costs of administering her estate and costs arising by reason of her death. The balance of the corpus would be distributed in accordance with her will. The trust effectively combines the features of an estate trust with a life estate power of appointment trust, and qualifies for the marital deduction. Distinguished by Rev. Rul. 75–128.§20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 72–333, 1972–2 C.B. 530.

170.51 "Estate trust" with "power of appointment trust"; marital deduction. The marital deduction is not allowable with respect to a testamentary trust created by a decedent that provided, life income to his spouse in the amount the trustee deemed necessary, accumulation of undistributed income, distribution on the spouse's death of amounts deemed necessary in the trustee's discretion for costs of administration and arising due to her death, and the balance distributed as appointed by the spouse's will or, if not appointed, paid to her estate. Rev. Rul. 72–333 distinguished. §20.2056(b)–5. (Sec. 2056, '54 Code.)

Rev. Rul. 75–128, 1975–1 C.B. 308.

170.52 Exchange of retained interest. An individual transferred the retained right of income from an irrevocable trust to the individual's children in return for the children's agreement to make annuity payments of not less than the trust income or an amount certain that was less than average trust income. The fair market value of the trust corpus on the date of the individual's death is includible in the gross estate under section 2036(a) because the likelihood that the children would have to make payments from their own funds was remote and, since the decedent had received no consideration for the transfer, no part is excludible under section 2043. §§20.2036, 20.2043–1. (Secs. 2036, 2043; '54 Code.)

Rev. Rul. 79–94, 1979–1 C.B. 296.

170.53 Family Estate; retained life estate. The gross estate of a grantor-decedent must include, under sections 2036 and 2038, the value of any assets held by a so-called "Family Estate" which derive from his transfers of property to the "Family Estate" in exchange for units of beneficial interest, where he continued to enjoy the transferred property until his death and, with the other trustees, held a power to amend or terminate at his death. Further, the value of the units of beneficial interest, to the extent not included otherwise, must be included in the decedent's gross estate under section 2033. §§20.2033–1, 20.2036–1, 20.2038–1. (Secs. 2033, 2036, 2038; '54 Code.)

Rev. Rul. 75–259, 1975–2 C.B. 361.

170.54 Generation-skipping; addition to trust; valuation date. The date for valuing an addition to a trust, for purposes of the Generation-Skipping Transfer Tax, is the date the will or trust provision requiring the addition becomes effective. §26.2601. (Sec. 2601, '54 Code.)

Rev. Rul. 82–36, 1982–1 C.B. 146.

170.55 Income tax liability incurred prior to death. In determining the net value of the assets of an inter vivos trust created by the decedent and included in his gross estate, allowance should be made for any income tax liability incurred by the trust prior to the date of decedent's death. No allowance should be made for any income tax liability incurred by the trust subsequent to that date, regardless of the valuation date applicable.§81.37. (Sec. 812(b), '39 Code; Sec. 2051, '54 Code.)

Rev. Rul. 55–601, 1955–2 C.B. 606.

170.56 Incompetent beneficiary. The mental incompetence of a lifetime income beneficiary of a testamentary trust to exercise a power of appointment created in 1950 did not prevent such power from being general and the value of the principal of such trust is includible in said beneficiary's gross estate upon her death. Also, the value of the trust at the date of its creation would qualify for the marital deduction despite the decedent's incompetence. (Secs. 2041, 2056; '54 Code.)

Rev. Rul. 55–518, 1955–2 C.B. 384.

170.57 Incompetent wife-beneficiary. The value of assets in a trust created by the husband's will to provide lifetime income for his wife who could bequeath the trust principal by her will, qualifies for the marital deduction and is includible in the wife's gross estate even though she was mentally ill from the time of her husband's death to the time of her death, under state law, legally incapable of exercising her testamentary power of appointment. §§20.2041–1, 20.2056(b)–5. (Secs. 2041, 2056; '54 Code.)

Rev. Rul. 75–350, 1975–2 C.B. 366.

170.58 Inter vivos; invasion of corpus; needs of beneficiary. Decedent created a trust, naming himself as trustee, for the benefit of his children. The trustee was given discretionary power to pay income or invade corpus for the beneficiaries' education, maintenance, medical expenses, or other needs occasioned by emergency. In addition, the trustee was empowered to divide the trust estate and to allocate receipts and expenses between principal and income. *Held,* the decedent-trustee's power to distribute income or principal was limited by State law, was not a power to designate the persons to enjoy the property within the meaning of section 2036(a)(2) of the Code, and corpus was not includible in his gross estate under section 2038(a)(1). (Secs. 2036, 2038; '54 Code.)

Marvin L. Pardee, 49 T.C. 140, Acq., 1973–2 C.B. 3; Ralph Budd, 49 T.C. 468, Acq., 1973–2 C.B. 1.

170.59 Inter vivos; invasion of corpus; needs of beneficiary. Decedent created an irrevocable inter vivos trust governed by the laws of New York State naming his grandson as both income beneficiary and contingent remainderman and himself as trustee with the power to invade trust corpus when it appeared that the grandson needed funds for the purpose of defraying expenses occasioned by illness, infirmity or disability or for his support, maintenance, education, welfare and happiness. *Held,* decedent did not retain rights to designate the persons who would possess or enjoy the trust property or income therefrom or power to alter, amend, revoke or terminate the trust sufficient to require inclusion of the trust in his gross estate under sections 2036(a)(2) or 2038(a)(1). (Secs. 2036, 2038; '54 Code.)

Edward E. Ford, 53 T.C. 114, Nonacq., 1978–2 C.B. 3.

170.60 Inter vivos; invasion of corpus; special needs of beneficiary. The value of an inter vivos trust is includible in the settlor-trustee's gross estate if he was empowered to invade the corpus for unspecified "special needs" of the beneficiary, but not if the "special needs" were restricted to the beneficiary's support and education.§20.2038–1. (Sec. 2038, '54 Code.)

Rev. Rul. 73–143, 1973–1 C.B. 407.

170.61 Inter vivos; retained interest; lower court decision. The value of trust property is not includible in the grantor-decedent's gross estate where his power to appoint himself as trustee was effectively extinguished by a lower court decision that was not appealed, even though it was inconsistent with decisions of the State's highest court.§§20.2036–1, 20.2038–1. (Secs. 2036, 2038; '54 Code.)

Rev. Rul. 73–142, 1973–1 C.B. 405.

170.62 Inter vivos; transfer added to principal. Decedent created a testamentary trust, giving his former wife a life estate therein, and agreed that the value of any inter vivos transfers would be added to the trust principal. Later he made such transfers for the benefit of minor children born of a subsequent marriage. *Held,* the value of these transfers should be added to the net value of the trust for purposes of computing the life estate (which was a debt). (Sec. 2053, '54 Code.)

Harold Hartshorne, 48 T.C. 882, Acq., 1968–1 C.B. 2.

170.63 Irrevocable; partial consideration. The decedent and his wife entered into a separation agreement under which the decedent established a trust the income of which was to be used, in part, for the support of the couple's children during their minority. Under the agreement the wife released the decedent from his obligation to support the children. *Held,* to the extent of the reasonable prospective value of the children's support rights, the transfer was for a consideration in money or money's worth and, therefore, such value was not includible in the decedent's estate. (Sec. 811(i), '39 Code; Sec. 2043, '54 Code.)

Robert Manning McKeon, 25 T.C. 697, Acq., 1958–2 C.B. 6.

170.64 Irrevocable; support of minor children. Decedent created two irrevocable trusts prior to his death for the primary benefit of his two minor children, naming separate trustees. The trusts provided that during the minority of the beneficiaries, the trustee should use as much of the net annual income and any accumulated income of the trusts as they deemed advisable for the maintenance, education, and support of the beneficiaries, and accumulate the balance. During decedent's lifetime he continued to support the children and the trustees accumulated all the income from the trusts. *Held,* the trusts were not created to discharge decedent's obligation of support, and the trustees had sole discretion as to whether income was to be applied for support. Accordingly, the value of the corpora is not includible in decedent's gross estate. (Sec. 2036, '54 Code.)

Jack F. Chrysler, 44 T.C. 55, Acq. in result, 1970–2 C.B. xiv.

170.65 Life estate in property; power of appointment. Decedent's father died testate shortly after the preparation, but before execution, of a new will. Without knowledge of the contents of either will, the family agreed to carry out the provisions of the unexecuted draft. Thus, decedent's share of the estate was transferred to trusts with income payable for life and a limited power of appointment. *Held,* the decedent inherited a life estate with a limited power of appointment; she made no transfers of property to the trusts; and no part of the value of the trusts is includible in her gross estate. (Secs. 811(c), 811(d), '39 Code; Secs. 2035, 2038, '54 Code.)

Elizabeth W. Vease, 35 T.C. 1184, Nonacq., 1962–1 C.B. 5.

170.66 Life insurance proceeds paid to irrevocable trust; partnership; excludable from gross estate. Proceeds of a partnership group term life insurance policy are not includible in partner-decedent's estate under section

2042(2) where the partner assigned all right, title, and interest in the policy to a trust more than three years before death. §20.2042–1 (Sec. 2042, '54 Code.)

Rev. Rul. 83–148. 1983–2 C.B. 157.

170.67 Life insurance proceeds paid to trust. The proceeds of a life insurance policy were payable to a decedent's estate to the extent of the policy's cash surrender value, less any outstanding indebtedness, and the balance was payable to the trustee of an irrevocable funded insurance trust, which was created by the decedent and which owned the policy and paid that portion of the annual premium that exceeded the annual increase in the cash surrender value. All contract rights under the policy were exercisable by the trustee except for decedent's right, never exercised, to borrow against the cash surrender value. The proceeds payable to the estate are includible in the gross estate under section 2042(1); the balance is includible under section 2042(2). §20.2042–1. (Sec. 2042, '54 Code.)

Rev. Rul. 79–129, 1979–1 C.B. 306.

170.68 Nominal settlor v. real settlor. Shortly before decedent's wife transferred in trust bonds that he had owned, they had discussed plans to establish the trust. Under the trust agreement, decedent's consent was necessary in order for his wife to alter or revoke the trust, and he was given the power to control trust investments. *Held,* decedent had made a gift of the bonds to his wife prior to the transfer and she was the real settlor, not merely a nominal settlor, of the trust. Accordingly, the value of the trust was not taxable to decedent's gross estate. (Secs. 811(c), 811(d), '39 Code; Secs. 2035, 2038, '54 Code.)

Arnold Resch, 20 T.C. 171, Acq., 1953–2 C.B. 6.

170.69 Pooled income fund; beneficiary's income interest based on another's life. An otherwise qualifying fund whose governing instrument permits the duration of a beneficiary's income interest to be measured by the life of another does not qualify as a pooled income fund under section 642(c)(5), and the value of a remainder interest in property transferred to the fund is not deductible under section 170, 2055, 2106, or 2522, even though the instrument of transfer bases the duration of the designated beneficiary's income interest on the beneficiary's life. The fund's governing instrument may be amended to qualify prospectively if the fund has not accepted property under a defective instrument of transfer. §§20.2055–2, 20.2106–1, 25.2522(c)–3. (Secs. 170, 642, 2055, 2106, 2522; '54 Code.)

Rev. Rul. 79–61, 1979–1 C.B. 220.

170.70 Power of appointment; jointly held; substantial adverse interest. A decedent who was the life beneficiary and a trustee of a testamentary trust could, with the consent of another trustee, one of the decedent's children, direct the trustees to distribute the trust property to anyone, including the decedent, and could direct by will that the remainder be paid to any of the decedent's children, who otherwise would receive it equally. The child's interest is not a substantial adverse interest under reg. 20.2041–3(c); the decedent consequently possessed at death a general power of appointment, of which the child was not a coholder, and the total value of the trust property is includible in the decedent's gross estate. §20.2041–3. (Sec. 2041, '54 Code.)

Rev. Rul. 79–63, 1979–1 C.B. 302.

170.71 Power of consent to trust distributions. The decedent created an irrevocable trust no part of the income or corpus of which could ever revert to him. His wife and descendants were made the beneficiaires of the trust; however, the trustees were authorized to make distributions from trust principal for the benefit of the beneficiaires in certain specific contingencies if other funds were insufficient to provide for their support, but only if he consented. None of the contingencies occurred during his lifetime. *Held,* the trust instrument did not give him the power to control distributions of income and the corpus of the trust was not includible in his estate. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Frederick M. Kasch, 30 T.C. 102, Acq., 1958–2 C.B. 6.

170.72 Powers of appointment; ascertainable standard. The decedent who was granted a life estate in a trust with the power to invade corpus as desired to continue an accustomed standard of living, which power under the applicable state law is not construed to impose an objective limitation, possessed a power that was not limited by an ascertainable standard relating to health, education, support or maintenance and consequently possessed at death a general power of appointment.§20.2041–1. (Sec. 2041, '54 Code.)

Rev. Rul. 77–60, 1977–1 C.B. 282.

170.73 Powers of appointment; ascertainable standard. The life beneficiary of a testamentary trust the corpus of which could be invaded for the beneficiary's "proper comfort and welfare," a power not limited under the applicable New Jersey law to an ascertainable standard relating to health, education, support, or maintenance, possessed at death a general power of appointment.§20.2041–1. (Sec. 2041, '54 Code.)

Rev. Rul. 77–194, 1977–1 C.B. 283.

170.74 Powers of appointment; ascertainable standard. The power of a decedent who was the income beneficiary and sole trustee of a trust to apply as much of the trust principal as necessary for such trustee-beneficiary's maintenance and medical care, which power was limited by an ascertainable standard under local law, was limited by an ascertainable standard relating to maintenance and health within the meaning of section 2041(b)(1)(A) and was not a general power of appointment. §20.2041–1. (Sec. 2041, '54 Code.)

Rev. Rul. 78–398, 1978–2 C.B. 237.

170.75 Powers of appointment; creation of another power. A decedent who had a special power of appointment over trust property exercised it by will, creating in her husband a second special power of appointment with respect to the same property. The applicable Wisconsin rule against perpetuities measures the perpetuities period with respect to a trust created by the exercise of a special power from the time the power was created. The value of the property was not includible in decedent's estate under section 2041(a)(3). (Sec. 2041, '54 Code.)

Mary Margaret Murphy, 71 T.C. 671, Acq., 1979–2 C.B. 2.

170.76 Powers of appointment; general; ascertainable standard. For purposes of section 2041, the income beneficiary of a trust governed by Massachusetts law possesses a general power of appointment when the income beneficiary can invade the trust corpus for the beneficiary's "maintenance, comfort, and happiness." The Service will not follow the *Brantingham* decision. §20.2041–1. (Sec. 2041, '54 Code.)

Rev. Rul. 82–63, 1982–1 C.B. 135.

170.77 Powers of appointment; release of general power after shift in value of trust assets. Acquiescence in a recapitalization of closely held stock in a trust is a transfer by the trust beneficiary subject to the gift tax, where the recapitalization results in a shift in the beneficiary's interest by decreasing the value of the remainder interest over which the beneficiary has a general power of appointment. §§20.2036–1, 20.2041–3, 25.2511–1, 25.2514–1. (Secs. 2036, 2041, 2511, 2514; '54 Code.)

Rev. Rul. 86–39, 1986–11 I.R.B. 23.

170.78 Principal to produce income for others. Decedent created an inter vivos trust providing for fixed annual payments to each of her children with the balance of the net income to herself during her lifetime. Provision was made for the distribution of the corpus upon decedent's death. If any of the children predeceased the settlor, the deceased child's share of the income was to go to the issue of such child or to the principal of the trust in the sole discretion of the trustee. *Held,* the portion of the property necessary to produce the fixed income is not includible in decedent's gross estate because the decedent did not retain any right to the income from such property. (Sec. 2036, '54 Code.)

Mary Fownes Tomec, 40 T.C. 134, Acq., 1964–1 (Part 1) C.B. 5.

170.79 Reciprocal; transfer of stock. *H* transferred 1000 shares of stock in trust to pay the income to his wife, *W*, for life. Simultaneously, *W* transferred 750 shares of stock in trust to pay the income to *H* for life. Each is presumed to have granted a life estate in trust in consideration of receiving a life estate in trust created by the other, and the value of 750 shares of the stock transferred in trust by each is includible in his or her gross estate as a transfer with a retained life estate. (Sec. 2036, '54 Code.)

Rev. Rul. 57–422, 1957–2 C.B. 617.

170.80 Reimbursement of tax increase; deduction for administration expenses. The executor of a testamentary charitable remainder trust made an election to claim administration expenses on the estate's income tax return. Pursuant to State law, the residue of the estate was reimbursed in an amount equal to the increase in the estate tax as a result of the election. The reimbursement is included in the corpus for purposes of computing the value of the charitable deduction under section 2055(a). §20.2055–2. (Sec. 2055, '54 Code.)

Rev. Rul. 78–445, 1978–2 C.B. 242.

170.81 Relinquishment of power to amend. The decedent transferred property in 1930 to a trust created by him under which he retained a secondary right to income and also a power to amend which he relinquished in 1944. *Held,* the "transfer" occurred in 1930, not in 1944, and is, therefore, not includible in decedent's gross estate since it occurred prior to March 4, 1931. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Ellis Branson Ridgway, 33 T.C. 1000, Nonacq., 1960–2 C.B. 8.

170.82 Remainder interest; gratuitously assigned. A decedent's gratuitous assignment of his contingent remainder interest in a trust, reserving the right to receive the trust income for such time as he survived the principal income beneficiary, is includible in the decedent's gross estate if he did in fact survive the beneficiary. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 72–611, 1972–2 C.B. 526.

170.83 Remainder interest; power to appoint by will. The primary beneficiary of an intervivos trust was given a general power to appoint by will the remainder interest in the trust. She exercised her power by appointing the remainder interest to another trust which she created by her will. *Held,* the value of the remainder interest in the conveyed trust as of the date of her death, is includible in her gross estate.§20.2041–1. (Sec. 2041, '54 Code.)

Rev. Rul. 69–239, 1969–1 C.B. 198.

170.84 Remainder interest; retained life estate. The entire value of the corpus of an inter vivos charitable remainder unitrust from which the grantor retained a life payment of a unitrust adjusted payout rate of 5.660 percent or greater is includible in the decedent's gross estate. The method is provided to compute the proportion of the trust assets includible in the gross estate for a unitrust adjusted payout rate less than 5.660 percent. §20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 76–273, 1976–2 C.B. 268.

170.85 Remainder interest; trustee and life beneficiary. The taxpayer was the sole trustee and sole income { life} beneficiary of a trust in which a decedent had a remainder interest. The assets of the decedent's estate, exclusive of the remainder interest, were insufficient to pay the estate tax computed on an estate including the value of the remainder interest. *Held,* the taxpayer was not a fiduciary of the remainder interest, but rather held a present interest for himself and therefore could not be required to pay part of the tax assessed on the decedent's estate out of his present interest. (Sec. 6903, '54 Code.)

John Grimm, 43 T.C. 623, Acq., 1965–2 C.B. 5.

170.86 Residuary testamentary clause. A trust created in 1923 gave decedent a general power of appointment conditioned upon the death of *B* and *C* before *A,* decedent's sisters and brother. Decedent predeceased *A, B,* and *C,* and even though her general power over corpus had not come into being, the condition in the trust instrument did not restrict the exercise of the power, it merely qualified the property interest subject thereto. She was found to have exercised this power and the property is includible in her gross estate.§81.24. (Sec. 811(f), '39 Code; Sec. 2041, '54 Code.)

Rev. Rul. 55–486, 1955–2 C.B. 605.

170.87 Retained interest; decedent's son appointed trustee. Decedent established an irrevocable inter vivos trust and appointed his son as trustee. The trust instrument provided that the trustee shall pay to decedent's wife during her lifetime such amounts of the net income and principal, if required, as the trustee should in his unrestricted discretion determine to be necessary for the support and maintenance of the decedent's wife, taking into consideration her other sources of income. *Held,* the value of the trust property is not includible in the decedent's gross estate; decedent did not retain or reserve the possession or enjoyment of, or right to the income from, the property transferred inasmuch as the income or property was not to be applied toward the discharge of his legal obligation to support his wife, the use for such purpose being within the discretion of the trustee; there was a bona fide settlor-trustee relationship between the decedent and his son and the son, as trustee, was not dominated or controlled by the decedent. (Sec. 2036, '54 Code.)

Abner W. Mitchell, 55 T.C. 576, Acq., 1971–1 C.B. 2.

170.88 Retained interest; right to designate beneficiary. Interpreting a trust instrument, a state court instructed that, in the event annuities for the donors were not purchased, the trustees were authorized to make distributions to named beneficiaries, providing the donors approved and all parties involved certified in writing their opinion that the remaining trust corpus was sufficient to make certain annual payments to the donors. *Held,* the giving or withholding of the decedent donor's approval to a distribution to a beneficiary who might not be entitled thereto until the claim of the donor was satisfied is not the exercise of a right to designate the persons who shall possess or enjoy the property or the income therefrom. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Maria Becklenberg, 31 T.C. 402, Acq., 1959–2 C.B. 3.

170.89 Retained life estate; power of appointment. The decedent executed a trust agreement in 1919 wherein she reserved to herself the income from the trust for life and the right to appoint by will the distribution of the trust corpus after her death. The trust was irrevocable under local law. She irrevocably released this power of appointment in 1942. *Held,* the transfer in trust occurred in 1919 when the trust was created rather than at the time the general testamentary power of appointment was released and, therefore, the trust corpus is excludable from the grantor's gross estate as a transfer made prior to March 4, 1931. (Sec. 2036, '54 Code.)

Ellie G. Canfield, 34 T.C. 978, Nonacq., 1963–1 C.B. 5.

170.90 Retained power as settlor. The decedent transferred various securities and life insurance policies on his life to a newly created trust naming himself and two others as co-trustees who were instructed to pay the premiums out of trust income and distribute the remainder to beneficiaries. The decedent expressly reserved the power as settlor to substitute securities and other insurance policies of "equal value" for those held by the trust. *Held,* none of the trust assets were includible in the decedent's estate. The decedent's retained power to substitute is not a power to alter, amend, or revoke; the power and right of the decedent with respect to the insurance policies held in trust did not constitute incidents of ownership. (Secs. 2038, 2042; '54 Code.)

Anders Jordahl, 65 T.C. 92, Acq., 1977–1 C.B. 1.

170.91 Retained power to accumulate or distribute income. Where a settlor in establishing irrevocable trusts, retained sufficient powers as co-trustee to accumulate or distribute trust income to make the original trust corpus includible in his gross estate, the undistributed accumulated income, which had been transferred to corpus through the exercise of the retained powers, was also includible in his gross estate. The settlor retained until his death right "to designate the persons who shall possess or enjoy the property or the income therefrom" and with respect to each addition to trust principal from accumulated income made a "transfer" as required by section 811(c)(1)(B)(ii) of the Code.§81.17. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

O'Malley, 383 U.S. 627, Ct. D. 1910, 1966–2 C.B. 526.

170.92 Retained power to govern enjoyment. The decedent-trustor established three inter vivos trusts, providing income from transferred securities to be paid to beneficiaries for life with remainders over to remaindermen. The trustee, during the lifetime of the decedent, could exercise the broad powers only as and when the decedent directed. *Held,* the decedent was in effect a fiduciary and was not at liberty, by reason of state law, to administer the trust for his own benefit or to ignore the rights of the beneficiaries. The trust property was not includible in the decedent's gross estate due to retention of a right to designate who shall enjoy the property. (Secs. 2036, 2039; '54 Code.)

Willard V. King, 37 T.C. 973, Nonacq., 1963–1 C.B. 5.

170.93 Reversionary interest. Only the present value of decedent's contingent right to dispose of $4,000 annually out of trust corpus, which amounted to a reversionary interest of more than five percent of the entire trust corpus, is includible in his gross estate under sections 811(c)(1)(C) and 811(c)(2) of the Code; the value of the reversionary interest in income a power of invasion and the value of the reversionary interest in the entire trust corpus may not be combined to meet the percentage requirement of section 811(c) (2) of the Code. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Arthur Klauber, 34 T.C. 968, Nonacq., 1964–1 (Part 1) C.B. 6.

170.94 Reversionary interest; contemplation of death. In 1975, decedent transferred, in contemplation of death, a reversionary interest in trust property, the value of which was more than 5 percent of the trust property. Immediately before decedent's death in 1976, however, the value of the reversionary interest was less than 5 percent of the value of the trust property. None of the property is includible in decedent's gross estate under section 2035. §§20.2035–1, 20.2037–1. (Secs. 2035, 2037; '54 Code.)

Rev. Rul. 79–62, 1979–1 C.B. 295.

170.95 Revocable; community property; decedent's interest. Husband and wife transferred their California community property to a revocable trust, reserving to themselves a life income interest therein. Upon the death of one of the spouses, one-half of the value of the community interest in the property held in the trust is includible in determining the value of the decedent's gross estate.§§20.2033–1, 20.2036–1, 20.2038–1. (Secs. 2033, 2036, 2038; '54 Code.)

Rev. Rul. 66–283, 1966–2 C.B. 297.

170.96 Revocable; created for support. Decedent and his wife contemporaneously executed a separation agreement calling for monthly payments and a trust agreement giving the wife income for life from assets transferred in trust. Neither agreement referred to the other. The subsequent divorce decree incorporated the provisions of the separation agreement but made no mention of the trust agreement. *Held,* (1) both the separation agreement and transfer in trust were made in consideration of the release of the wife's support rights, (2) the transfer in trust was not supported by adequate and full consideration and the decedent's gross estate includes the value of trust assets at date of death, minus the value on the date of transfer. (Secs. 2036, 2038, 2043; '54 Code.)

Howard Lee Davis, 51 T.C. 269, Acq., 1969–2 C.B. xxiv.

170.97 Revocable; created prior to 1924. Reg. 20.2038–1(d) is not applicable to exclude from the gross estate of a decedent an interest in property transferred before the enactment of the Revenue Act of 1924 to a trust, which could be amended or revoked only with the written consent of the decedent's spouse who, but for predeceasing the decedent, would have received the corpus of the trust or the income therefrom upon the death of the decedent. Section 20.2038–1(d) is equally inapplicable when a condition is added after 1924 to the right to revoke or amend requiring the written consent of at least one of the decedent's children who have a right to share in the trust income after the decedent's death.§20.2038–1. (Sec. 2038, '54 Code.)

Rev. Rul. 78–16, 1978–1 C.B. 289.

170.98 Revocable; division of corpus. The division of the corpus of a revocable trust, included in decedent's gross estate, to facilitate the payment of income to life beneficiaries does not constitute a distribution of property. The date of the division, as opposed to the date one year after the decedent's death, cannot be used as the alternate valuation date. The trust corpus does not cease to form a part of the decedent's gross estate by reason of such division. Distinguished by Rev. Rul. 73–97. (Sec. 2032, '54 Code.)

Rev. Rul. 57–495, 1957–2 C.B. 616.

170.99 Revocable; division of corpus into separate trusts. The trustee's division of the corpus of an original revocable trust into separate trusts upon the settlor's death constitutes a distribution for alternate valuation purposes. Rev. Rul. 57-495 distinguished.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 73-97, 1973-1 C.B. 404.

170.100 Revocable; division of corpus into separate trusts. A revocable inter vivos trust executed by a husband and wife and consisting of community property was divided into two separate trusts upon the death of one spouse. The surviving spouse's trust interest was distributed to a new trust within six months; the decedent's interest, which was the only part includible in the decedent's gross estate, was not so distributed until after six months. There is no distribution for alternate valuation purposes until the distribution of the decedent's interest, even though the successor trust's trustee could have compelled a distribution after four months by way of a court order. §20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 78-431, 1978-2 C.B. 230.

170.101 Revocable; power to terminate extinguished. A provision of a trust instrument provided that the trust could be terminated by a decedent with the consent of two of her children at any time during her lifetime. Three of the decedent's four children predeceased her. Held, the decedent's right ot terminate the trust ended on the death of her third child, and the assets of the trust were not includible in her estate. (Sec. 2038, '54 Code.)

Jane deP. Webster, 65 T.C. 968, Acq., 1977-2 C.B. 2.

170.102 Revocable; pre-March 1931 transfers. Decedent established a trust in 1923. Decedent and her husband could exercise the right to modify, alter or revoke the trust during their joint lives, such power passing to the survivor of them and a remainderman for their joint lives. In 1923 and 1929, decedent transferred securities to the trust. On March 4, 1931, the decedent and her husband were alive and the trust remained revocable. In 1932 and 1933, decedent and her husband revoked the trust in part by the withdrawal of some securities. *Held,* all pre-March 4, 1931 transfers fall within the exception provided by section 2036(b) of the Code, regardless of any power to revoke which the grantor may have retained. Therefore, the value of the trust property is not includible in the decedent's gross estate. (Sec. 2036, '54 Code.)

Eleanor B. Talbott, 48 T.C. 271, Nonacq., 1970-2 C.B. xxii.

170.103 Revocable; relinquishment of power to revoke. Within the meaning of section 7 of the Technical Changes Act of October 5, 1949, as amended, a revocable inter vivos transfer in the form of a trust with income retained is deemed to have been made at the time after March 3, 1931, when the donor relinquished his power to revoke, amend, or terminate the trust rather than in 1926 when the trust was created, and the value thereof is includible in the donor's gross estate.§81.18. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 277, 1953-2 C.B. 265.

170.104 Revocable; remainder interest; reserved power. Only the value of the remainder interest is includible in decedent's gross estate where the enjoyment of the son's life estate is not subject to change through exercise of decedent's reserved power to consent to or veto trustees' power to terminate the trust.§20.2038-1. (Sec. 2038, '54 Code.)

Rev. Rul. 70-513, 1970-2 C.B. 194.

170.105 Revocable; time to exercise power restricted. Where the grantor of a revocable trust at her death on May 1, 1959, had the power to revoke a trust agreement, even though it could not have been exercised until January 1, 1960, the discounted value of the property from the date of her death to the date the power could be exercised constitutes a part of her gross estate. G.C.M. 11034 superseded.§20.2038-1. (Sec. 2038, '54 Code.)

Rev. Rul. 68-538, 1968-2 C.B. 406.

170.106 Revocable; valuation of securities. The placing of jointly held securities, by a surviving spouse, into a revocable trust over which she has an unrestricted power of disposition, does not constitute a disposition of the securities so as to preclude the valuation of the property, to the extent that it still forms a part of the trust estate as of a date one year after decedent's death.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 59-213, 1959-1 C.B. 244.

170.107 Right to specified annuity income. Where the decedent transferred substantially all of his property into a trust account for the benefit of his children, reserving the right to withdraw from the income or the principal, if necessary, a specified annuity or an amount equal to his living expenses, the transfer was not a bona fide sale for an adequate and full consideration in money or money's worth, and the value of the property transferred is includible in his gross estate.§81.18. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Rev. Rul. 55-378, 1955-1 C.B. 447.

170.108 Segregation or separation of property. The preparation of tentative schedules of distribution is not the equivalent of an order or decree of distribution for purposes of valuation of the estate of a decedent under section 2032 of the Code even if subsequently followed; nor does the preparation of such schedules constitute a segregation or separation of property from the trust even though made at the time of the occurrence of the event that terminates the trust.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 66-272, 1966-2 C.B. 432.

170.109 Transfer in contemplation of death; benefit of daughter. The decedent transferred $82,000 to a trust for the benefit of his six-year old daughter. At the time of the transfer, decedent was fifty-four years old and was suffering from the disease from which he died about two years later. However, he had no knowledge or realization of the seriousness or fatal nature of the disease. He was concerned about a serious impairment of his earning capacity as a result of the illness and a heavy drain on his financial resources. *Held,* on the facts, the transfers were not in contemplation of death. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Samuel Want, 29 T.C. 1223, Acq., 1958-2 C.B. 8.

170.110 Transfers; contingent power of decedent. If the transferor can change the trustee at will, naming himself as the new trustee, it can be a power to alter, amend or revoke, if the trustee can amend the trust in conjunction with adult beneficiaries. On the other hand, if the trustee can be replaced only in the event of death or disqualification and the transferor dies before any replacement becomes necessary, his power is not one which will result in taxability.§81.20. (Sec. 811(d), '39 Code; Sec. 2038, '54 Code.)

Rev. Rul. 55-393, 1955-1 C.B. 448.

170.111 Transfers; contingent power to appoint successor trustee. The value of property transferred in trust under which the trustee determines the distribution accumulation of income and the decedent retained a life power to appoint a successor, including himself, if the trustee was unable to serve, is includible in the decedent's gross estate.§20.2036-1. (Sec. 2036, '54 Code.)

Rev. Rul. 73-21, 1973-1 C.B. 405.

170.112 Transfers; contingent power to appoint successor trustee. The value of assets in an irrevocable inter vivos trust, under which the corporate trustee determines distributions of income among the grantor's children, is not includible in the grantor decedent's gross estate by reason of the grantor's retention of a life power to appoint a successor corporate trustee if the original trustee resigned or was removed by judicial process.§20.2036-1. (Sec. 2036, '54 Code.)

Rev. Rul. 77-182, 1977-1 C.B. 273.

170.113 Transfers; contingent power to appoint successor trustee. A decedent created an irrevocable inter vivos trust. The trust instrument provided that the decedent might not appoint himself trustee, that the corporate trustee might distribute trust income and principal to decedent's adult children without limitation, that after the children died the remaining trust principal and undistributed income would be distributed to decedent's grandchildren, and that decedent would retain a life power to replace the corporate trustee without cause. The value of the undistributed trust principal and accumulated income is includible in the decedent's gross estate under sections 2036 and 2038. Modified by Rev. Rul. 81-51. §§20.2036-1, 20.2038-1. (Secs. 2036, 2038; '54 Code.)

Rev. Rul. 79-353, 1979-2 C.B. 325.

170.114 Transfers; contingent power to appoint successor trustee. Rev. Rul. 79-353, which holds that the value of property transferred to a trust is includible in the decedent-grantor's gross estate under sections 2036(a)(2) and 2038(a)(1) if the grantor retains the power to replace the trustee, will not be applied to a transfer or to an addition to a trust made before October 29, 1979, if the trust was irrevocable on October 28, 1979. Rev. Rul. 79-353 modified. §§20.2036-1, 20.2038-1, 301.7805-1. (Secs. 2036, 2038, 7805; '54 Code.)

Rev. Rul. 81-51, 1981-1 C.B. 458.

170.115 Transfers; interest in property; undivided portion of trust. A ten percent interest in a trust includible in the decedent's gross estate, as augumented by the residuary estate payable into the trust, payable immediately by the trustee to a charity which under local law is entitled to receive a ten percent interest in each asset comprising trust corpus and income from the date of death to distribution is not an interest transferred in trust and is allowable as a charitable deduction. §20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 75-414, 1975-2 C.B. 371.

170.116 Transfers; interest in property; undivided portion of trust. A charitable deduction is not allowable to the estate of a decedent who bequeathed the residuary estate in trust, with the spouse and a charity each entitled to half the income and, upon the spouse's death, half of the trust corpus is to be distributed to the charity and half of the trust corpus is to be distributed to the spouse's heirs.§20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 77-97, 1977-1 C.B. 285.

170.117 Transfers; retained interest; children born or adopted after creation. The provision in a trust instrument for the inclusion of all the settlor's after-born and after-adopted children as additional beneficiaries is not the retention of a power to change the beneficial interests of the trust. §§20.2036-1, 20.2038-1. (Secs. 2036, 2038; '54 Code.)

Rev. Rul. 80-255, 1980-2 C.B. 272.

170.118 Transfers; retained interest; surviving grantor. The terms of an instrument creating an irrevocable trust reserved for the grantors the joint power to vary the interest of the beneficiaries and the character and form of the investments but were silent as to whether the power was excercisable by the surviving grantor. Under state law, the death of one holder of a joint power extinguishes the power, unless a contrary intention is evident from the instrument creating the power. None of the trust property is includible in the gross estate of the surviving grantor under section 2036(a)(2) or 2038(a)(1). If state law provides that the power survives the death of one of its holders, the value of the property transferred is includible. §§20.2036-1, 20.2038-1. (Secs. 2036, 2038; '54 Code.)

Rev. Rul. 79-177, 1979-1 C.B. 298.

170.119 Transfers; valuation of assets. The amount includible in the decedent's gross estate on account of property she had transferred to a trust created by her husband for their daughter's benefit, over which the decedent held discretionary powers as trustee, is not the percentage of the value of the corpus represented by decedent's contribution immediately after the contribution was made as applied to the value of the total corpus on the valuation date. The value of assets identified as attributable to the husband's contributions must be excluded from the computation. (Sec. 2038, '54 Code.)

Nathalie F. Bell, 66 T.C. 729, Acq., 1977-2 C.B. 1.

170.120 Transfers; valuation of assets with retained interest. The retained interest to be included in the estate of a life income beneficiary of a testamentary trust, to which the beneficiary had made contributions of stock that remained in the trust at death, at which time the value of the stock could be easily ascertained, is the value of the stock at the time of death.§20.2036-1. (Sec. 2036, '54 Code.)

Rev. Rul. 78-74, 1978-1 C.B. 287.

170.121 Transfers within 3 years of death; gift tax. The gift tax paid by the decedent on a gift made within 3 years of death is includible in the gross estate under section 2035(c) even though the gift is also includible under another section. §20.2036-1 (Secs. 2035, 2036; '54 Code.)

Rev. Rul. 81-229, 1981-2 C.B. 176.

170.122 Valuation of deferred unitrust interest. The applicable method of computation under section 2031 of the Code is explained for determining the present value of a deferred unitrust interest of a life beneficiary who dies before receiving any distribution from the trust, the terms of which specify that section 1.664-1(a)(5) of the regulations shall be used to retroactively determine the unitrust amount due.§20.2031-10. (Secs. 664, 2031; '54 Code.)

Rev. Rul. 77-471, 1977-2 C.B. 322.

Valuation

Alternate

172.1 Allocation of assets to designated accounts. The allocation of estate assets by the executor into separate accounts corresponding with trusts described in the decedent's will but over which the executor retained dominion and control is not a distribution for alternate valuation purposes.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 71-396, 1971-2 C.B. 328.

172.2 Annuity; marital deduction; contingent interest. A surviving spouse's interest is property will not qualify for the marital deduction where another party has an interest in the property on the decedent's date of death but that interest is extinguished prior to the alternate valuation date as elected by the executor of the decedent's estate. §§20.2032-1, 20.2056(b)-1. (Secs. 2032, 2039, 2056; '54 Code.)

Rev. Rul. 85-100, 1985-29 I.R.B. 10.

172.3 Charitable bequest based on adjusted gross estate. The amount of the allowable deduction with respect to a charitable bequest of 25 percent of a decedent's adjusted gross estate is determined by valuing the decedent's adjusted gross estate as of the alternate valuation date where the executor elects to use the alternate method of valuation.§§20.2032-1, 20.2055-1. (Secs. 2032, 2055; '54 Code.)

Rev. Rul. 70-527, 1970-2 C.B. 193.

172.4 Civil service survivorship annuity. Where a decedent-employee's estate is valued under the alternate method, a cost-of-living adjustment of the benefits payable under a civil service annuity made within the one-year period must be taken into account in determining the value of the survivorship annuity. The value of the annuity is to be computed by multiplying the surviving spouse's life expectancy at the decedent's death by the adjusted benefits payable. The amount of the annuity included in the decedent's estate is determined under section 2039 of the Code.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 69-341, 1969-1 C.B. 218.

172.5 Distribution; executor beneficiary; bond approved; District of Columbia Court approval of a special bond filed in the District of Columbia by an executor, who is the sole beneficiary of the estate, constitutes a "distribution" within the scope of section 20.2032-1(c)(2)(ii) of the regulations. Accordingly, if the approval date is within six months of the date of the decedent's death it is the alternative valuation date. However, if the executor in such a case is not the sole beneficiary or if there is a co-executor, the "distribution" date is the date of the actual final distribution of assets.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 73-399, 1973-2 C.B. 317.

172.6 Distribution; tentative schedules. The preparation of tentative schedules of distribution is not the equivalent of an order or decree of distribution for purposes of valuation of the estate of a decedent even if subsequently followed, nor does the preparation of such schedules constitute a segregation or separation of property from the trust even though made at the time of the occurrence of the event that terminates the trust.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 66-272, 1966-2 C.B. 432.

172.7 Division of trust corpus. The division of the corpus of a revocable trust, included in decedent's gross estate, to facilitate the payment of income to life beneficiaries does not constitute a distribution of property. The date of the division, as opposed to date one year after the decedent's death, cannot be used as the alternate valuation date. The trust corpus does not cease to form a part of the decedent's gross estate by reason of such division. Distinguished by Rev. Rul. 73-97. (Sec. 2032, '54 Code.)

Rev. Rul. 57-495, 1957-2 C.B. 616.

172.8 Division of trust into separate trusts. The trustee's division of the corpus of an original revocable trust into separate trusts upon the settlor's death constitutes a distribution for alternate valuation purposes. Rev. Rul. 57-495 distinguished.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 73-97, 1973-1 C.B. 404.

172.9 Division of trust into separate trusts. A revocable inter vivos trust executed by a husband and wife and consisting of community property was divided into two separate trusts upon the death of one spouse. The surviving spouse's trust interest was distributed to a new trust within six months; the decedent's interest, which was the only part includible in the decedent's gross estate, was not so distributed until after six months. There is no distribution for alternate valuation purposes until the distribution of the decedent's interest, even though the successor trust's trustee could have compelled a distribution after four months by way of a court order. §20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 78-431, 1978-2 C.B. 230.

172.10 Election; after filing return. Under certain conditions, the executor of an estate may supersede an estate tax return previously filed to elect to value the gross estate under the optional valuation method.§§81.11, 81.63. (Secs. 811(j), 821, '39 Code; Secs. 2032, 6018, 6065, '54 Code.)

Rev. Rul. 54-445, 1954-2 C.B. 301.

172.11 Election; after filing return. Where the value of the decedent's gross estate at the date of death does not exceed the statutory exemption of $60,000, a Federal estate tax return, Form 706, filed with respect to the estate is not a return as contemplated by section 6018(a)(1). Consequently an election to apply the alternate valuation provisions contained in section 2032 of the Code is not authorized. (Sec. 2032, '54 Code.)

Rev. Rul. 56-60, 1956-1 C.B. 443.

172.12 Election; basis for depreciation. The value of property included in decedent's gross estate, which is determined under the alternative valuation provision of section 2032 of the Code, is the proper value to use as the basis in computing depreciation allowable on such property subsequent to the date of death. The amount of that valuation relates back to the date of decedent's death, and for Federal income tax purposes, the adjusted basis is the value at the alternative valuation date reduced by the amount of depreciation allowed or allowable from the date of death.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 63-223, 1963-2 C.B. 100.

172.13 Election; computation of time. Where there is no day in the sixth month following the decedent's death which corresponds numerically to the date of death, the correct alternate valuation date is the last day of the sixth month.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 74-260, 1974-1 C.B. 275.

172.14 Election; failure to designate. The failure of an executor to designate an election of the alternate valuation on the estate tax return does not preclude valuation of the decedent's gross estate by the alternate valuation method where the information shown on the return otherwise evidenced a clear intention to exercise the election.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 61-128, 1961-2 C.B. 150.

172.15 Election; timely. The election to value estate assets under the alternate valuation method is timely exercised where the return in which the election is made is postmarked on or before the due date of the return or before the expiration of any extension of time for filing.§§20.2032-1, 301.7502-1. (Secs. 2032, 7502; '54 Code.)

Rev. Rul. 64-105, 1964-1 (Part 1) C.B. 328.

172.16 Farm and other assets; special use value. A decedent's estate may elect both alternative valuation under section 2032 and special use valuation under section 2032A. §§20.2032-1, 20.2032A-8. (Secs. 1016, 2032, 2032A; '54 Code.)

Rev. Rul. 83-31, 1938-1 C.B. 225.

172.17 Increased value; optional valuation. In valuing the gross estate, the executor may elect to use the optional valuation method even though there has been an increase in the value of the gross estate subsequent to the date of the decedent's death.§81.11. (Sec. 811(j), '39 Code; Sec. 2032, '54 Code.)

Rev. Rul. 55–333, 1955–1 C.B. 449.

172.18 Insurance policy; indirect payment of premiums. The increase in value of an insurance policy, such as one owned by a decedent who was not the insured, which is attributable to the payment of premiums, or any interest earned, during the year following date of death is deemed to be "excluded property" in determining the value of the policy. §81.11. (Sec. 811(j), '39 Code; Sec. 2032, '54 Code.)

Rev. Rul. 55–379, 1955–1 C.B. 449.

172.19 Insurance policy; insurance on life of another. Where a decedent owned life insurance policies on another person and that person died during the alternate valuation period, the increase in the value of the policies during that period is also includible in the decedent's gross estate, if the executor has elected to use the alternate valuation date provisions. §20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 63–52, 1963–1 C.B. 173.

172.20 Interest in farming partnership. The asset valuation method is the proper method of valuing a decedent's interest in a farming partnership under stated circumstances. Accordingly, where the executor of the estate elects the alternate valuation method, the value of decedent's partnership interest should be determined by valuing the various assets owned by the partnership at the date of death as of the applicable alternate valuation date. §20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 68–154, 1968–1 C.B. 395.

172.21 Life estate; credit for tax on prior transfers. The executor of an estate elected alternate valuation. For purposes of calculating the credit for tax on prior transfers, the value of a life estate is based on the appropriate factor for the transferee's age on the date of the transferor's death, and the value of the trust's corpus is determined on the alternate valuation date. §§20.2013–4, 20.2031–10, 20.2032–1. (Secs. 2013, 2031, 2032; '54 Code.)

Rev. Rul. 81–118, 1981–1 C.B. 453.

172.22 Livestock increased in value. Unsold livestock and crops of a deceased cash method farmer constitute items of property or inventory and not rights to, or items of, income in respect of a decedent. The appreciation in the value of the cattle during the alternate valuation period is not property earned or accrued and no part thereof is "excluded property," but is includible in the gross estate at the fair market value on the applicable valuation date. Any feed used in caring for the cattle constitute deductible administration expenses. §20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 58–436, 1958–2 C.B. 366.

172.23 Marital deduction; "estate equalization clause". Property passing to the decedent's spouse pursuant to an "estate equalization clause" qualifies for the marital deduction under section 2056 even though the clause allows for valuation of the spouse's estate on the alternate valuation date if elected for the estate of the decedent. §§20.2032–1, 20.2056(b)–1. (Secs. 2032, 2056; '54 Code.)

Rev. Rul. 82–23, 1982–1 C.B. 139; Charles W. Smith, 66 T.C. 415, Nonacq. withdrawn and Acq. substituted, 1982–1 C.B. 1; Fritz L. Meeske, 72 T.C. 73, Acq., 1982–1 C.B. 1.

172.24 Mineral production sold. No reduction is allowable in the valuation, under section 2032 of the Code, of mineral production sold within one year after the decedent's death by virtue of the statutory depletion allowance applicable for income tax purposes. Proceeds received by the estate from the extraction and sale of minerals do not constitute "amounts to which a decedent was entitled as gross income" and, therefore, cannot give rise to a deduction by the estate (or any of the beneficiaries) under section 691(c) of the Code for estate tax attributable to income in respect of a decedent. Clarified by Rev. Rul. 71–317. §20.2032–1. (Secs. 691, 2032; '54 Code.)

Rev. Rul. 66–348, 1966–2 C.B. 433.

172.25 Mineral production sold. The value of the royalty interest includible in a gross estate at the alternate valuation dates is the sum total of the in place fair market value of the reserves (units of mineral remaining) in existence one year after the date of death plus the value of the included property disposed of during the interim period. Rev. Rul. 66–348 clarified.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 71–317, 1971–2 C.B. 328.

172.26 Mutual fund capital gain dividends. A capital gain dividend declared and paid by a regulated investment company on its stock betwen the date of the decedent's death and the alternate valuation date, representing approximately 5 percent of the value of the stock on the alternate valuation date, is not includible in computing the value of the decedent's gross estate. §20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 76–234, 1976–1 C.B. 271.

172.27 Personal property; Federal excise tax added to basis. The Federal excise tax on jewelry, furs, and related articles of personal property is a relevant factor which should be considered in determining the fair market value of such property for Federal estate and gift tax purposes.§§81.10, 86.19. (Secs. 811, 1005, '39 Code; Secs. 2031, 2032, 2512, '54 Code.)

Rev. Rul. 55–71, 1955–1 C.B. 110.

172.28 Property passing directly to devisee; subject to claims against estate. The alternate valuation date is not fixed by the passing of property to a devisee in a state whose law provides that possession and title to real property passes to the devisee immediately upon the decedent's death, but the property remains subject to claims against the estate until a final court order. Rev. Rul. 71–5 revoked. §§20.2032–1, 301.7805–1. (Secs. 2032, 7805; '54 Code.)

Rev. Rul. 78–378, 1978–2 C.B. 229.

172.29 Property sold at price specified in will. An estate for which the alternate valuation method has been elected must include in the gross estate the value of property that is sold within six months after the decedent's death at its fair market value on the date of sale, even though it was sold at a lesser price specified by the decedent's will.§§20.2031–1, 20.2032–1. (Secs. 2031, 2032; '54 Code.)

Rev. Rul. 77–180, 1977–1 C.B. 270.

172.30 Property transferred to revocable trust. The placing of jointly held securities, by a surviving spouse, into a revocable trust over which she has an unrestricted power of disposition, does not constitute a disposition of the securities so as to preclude the valuation of the property, to the extent that it still forms a part of the trust estate as of a date one year after decedent's death.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 59–213, 1959–1 C.B. 244.

172.31 Right to partnership earnings. A partnership agreement in effect at decedent's death provided that, in the event of a partner's death, the partnership would pay his estate a percentage of partnership income for the year of death and the next three years. Subsequent to decedent's death, the remaining partners and beneficiaries of decedent's estate entered into a compromise agreement to reduce the estate's share of partnership income. The estate elected the alternate method of valuing assets as of the date one year after decedent's death. *Held*, in determining the value of the decedent's gross estate, the value of the right to share in partnership income should be determined under the compromise agreement, using actual partnership net income for the year of death as the estimated net income for all years involved, discounted from the end of the calendar year for which the payments were due back to the date of death rather than to the alternate valuation date. (Sec. 2032, '54 Code.)

Arthur H. Hull, 38 T.C. 512, Acq., 1964–2 C.B. 6.

172.32 Securities; sold during valuation period. The actual selling price of stock sold in arm's length transactions during the one-year period following the date of a decedent's death should be used in the valuation of such stock by an executor electing to use the alternate valuation method.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 70–512, 1970–2 C.B. 192.

172.33 Stock; dividends payable after death. Dividends declared prior to a decedent's death payable after date of death may not be added to the ex-dividend selling prices of stock for gross estate purposes under the alternate valuation provisions, but must be added to the ex-dividend selling prices at date of death for valuing the gross estate at date of death only. Where the alternate valuation method is used, stock valued at its ex-dividend selling price at the alternate valuation date must be increased by the amount of any dividends declared during the alternate valuation period.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 60–124, 1960–1 C.B. 368.

172.34 Stock; restricted Guidlines are set forth for the valuation, for Federal tax purposes, of securities that cannot be immediately resold because they are restricted from resale pursuant to Federal securities laws. Rev. Rul. 59–60 amplified.§§20.2031–2, 20.2032–1. (Secs. 170, 2031, 2032, 2512; '54 Code.)

Rev. Rul. 77–287, 1977–2 C.B. 319.

172.35 Stock; stock rights and dividends. The valuation to be used where the executors of an estate elect the alternate valuation method in certain factual sitations involving stock rights, stock dividends, insurance proceeds, and interest bearing obligations received or disposed of within the year following the decedent's death is set forth.§20.2032–1. (Sec. 2032, '54 Code.)

Rev. Rul. 58–576, 1958–2 C.B. 625.

172.36 Stock; valuation date. The date the assets of a corporation are delivered in liquidation of its stock shall be considered as the optional valuation date should the executor of an estate holding the stock of such corporation among the assets of the estate elect to use the optional valuation method in a timely filed estate tax return.§81.11. (Sec. 811(j), '39 Code; Sec. 2032, '54 Code.)

Rev. Rul. 54–444, 1954–2 C.B. 300.

172.37 Stock and warrants; received in reorganization. An estate, using the alternate valuation date, received stock, warrants, and cash for fractional shares in exchange for its stock under a section 368(a)(1)(A) reorganization. *Held*, no gain was realized; basis for the stock received was determined on the alternate valuation date, but for the warrants it was determined on the date of merger. (Secs. 354, 356, 1014, 2032; '54 Code.)

Charles A. Smith, 63 T.C. 722, Acq., 1976–2 C.B. 2.

172.38 Stock and warrants; received in reorganization. The exchange of a decedent's stock in a corporation for stock and warrants in another corporation during the alternate valuation period constitutes an "exchange" within the meaning of section 20.2032-1(c)(1) of the regulations and the stock given in the exchange should be valued as of the exchange date.§20.2032-1. (Sec. 2032, '54 Code.)

Rev. Rul. 77-221, 1977-1 C.B. 271.

172.39 Survivorship annuity; survivor's death within one year of decedent's. At decedent's death in 1947, his estate included seven single premium joint and survivorship annuity contracts. The executor elected to have the gross estate valued as of the valuation date. The survivor annuitant, decedent's widow, died three months after decedent. *Held,* Code Section 811(j)(2) was applicable, the balance of the amounts attributable to the annuity contracts as of decedent's death was lost prior to the optional valuation date due to causes other than the mere lapse of time, and the amount not due to the lapse of time was excludable from decedent's gross estate. The amount due to the lapse of time and includible in gross estate was the difference between replacement cost of the contracts at the surviving annuitant's death and the replacement cost at decedent's death. (Sec. 811(j), '39 Code; Sec. 2032, '54 Code.)

John A. Hance, 18 T.C. 499, Acq., 1953-1 C.B. 4.

Farms and closely held businesses

174.1 Election; written agreement. Guidelines are provided for the filing of a written agreement executed by all parties who have any interest in property that is being valued at its value as a farm or closely-held business rather than at its fair market value. §20.2032A-8. (Sec. 601.105, S.P.R.; Sec. 2032A, '54 Code.)

Rev. Proc. 81-14, 1981-1 C.B. 669.

174.2 Election; written agreement; dower interest. An executor may perfect an election to specially value qualifying real property under section 2032A, where the only imperfection is the failure to sign the agreement by the spouse who has only an inchoate dower interest. §20.2032A-8. (Sec. 2032A, '54 Code.)

Rev. Rul. 85-148, 1985-39 I.R.B. 4.

174.3 Farm; sale by qualified heirs to another qualified heir and spouse; consent agreement. The sale of 5 acres of farmland by 3 qualified heirs to one of the qualified heirs and that heir's spouse, followed by construction of their house thereon, did not constitute a disposition or cessation of qualified use with respect to the 5-acre parcel. The qualified heir and spouse must sign a consent agreement for personal liability for additional estate tax. §20.2032A-3. (Sec. 2032A, '54 Code.)

Rev. Rul. 85-66, 1985-1 C.B. 324.

174.4 Farm and other assets; special use value; alternate value. A decedent's estate may elect both alternative valuation under section 2032 and special use valuation under section 2032A. §§20.2032-1, 20.2032A-8. (Secs. 1016, 2032, 2032A; '54 Code.)

Rev. Rul. 83-31, 1938-1 C.B. 225.

174.5 Farms; gift made by qualified heir to family member. When a qualified heir, described in section 2032A(e), makes a gift of qualified real property to a family member who signs the agreement under section 2032A(d), the value of the gift is not reduced by the additional tax that could be subsequently imposed on the family member under section 2032A(c). §25.2512-1. (Secs. 2032A, 2512; '54 Code.)

Rev. Rul. 81-230, 1981-2 C.B. 186.

174.6 Farms; special use value; change in method after return filed. After the election for special use valuation under section 2032A has been made and the federal estate tax return has been filed, an executor may change the method of special use valuation of a decedent's qualified real property. §20.2032A-4. (Sec. 2032A, '54 Code.)

Rev. Rul. 83-115, 1983-2 C.B. 155.

174.7 Farms; special use value; charitable remainder. A farm in which the decedent has transferred a life interest, in trust or otherwise, to a member of the decedent's family with the remainder interest in the property going to charity may not be valued under section 2032A. §§20.2032A-8, 20.2055-2. (Secs. 2032A, 2055; '54 Code.)

Rev. Rul. 81-220, 1981-2 C.B. 175.

174.8 Farms; special use value; decedent's property interest. Where an executor elects special use valuation under section 2032A, the full limitation imposed by section 2032A(e)(2) applies to the decedent's qualified community property interest if the decedent was a noncontributory spouse. The result is the same regardless of the extent to which the decedent contributed towards the purchase of the property. §20.2032A-8. (Sec. 2032A, '54 Code.)

Rev. Rul. 83-96, 1983-2 C.B. 156.

174.9 Farms; special use value; interest rates. The interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A are listed for estates of decedents dying in 1982. §20.2032A-4. (Sec. 2032, '54 Code.)

Rev. Rul. 82-104, 1982-1 C.B. 129.

174.10 Farms; special use value; interest rates. The interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A are listed for estates of decedents dying in the period 1977-1981. An example illustrates how the annual interest rates are calculated. Rev. Rul. 80-179 superseded. §20.2032A-4. (Sec. 2032A, '54 Code.)

Rev. Rul. 81-170, 1981-1 C.B. 454.

174.11 Farms; special use value; interest rates. The interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A are listed for estates of decedents dying in 1983. §20.2032A-4. (Sec. 2032A, '54 Code.)

Rev. Rul. 83-71, 1983-1 C.B. 227.

174.12 Farms; special use value; interest rates. The interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A are listed for estates of decedents dying in 1984. §20.2032A-4. (Sec. 2032A, '54 Code.)

Rev. Rul. 84-119, 1984-32 I.R.B. 15.

174.13 Farms; special use value; interest rates. The interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A are listed for estates of decedents dying in the year indicated. §20.2032A-4. (Sec. 2032A, '54 Code.)

Rev. Rul. 85-92, 1985-27 I.R.B. 6 (1985)
Rev. Rul. 86-85, 1986-26 I.R.B. 5 (1986)

174.14 Farms; special use value; involuntarily convert property. In computing the duration of a decedent's ownership of farm property acquired after an involuntary conversion of other farm property, the duration of ownership of the original tracts is attributed to the replacement property on a proportionate basis. The property owned at death is replacement property to the extent attributable to reinvested condemnation proceeds. §20.2032A-3. (Sec. 2032A, '54 Code.)

Rev. Rul. 81-285, 1981-2 C.B. 173.

174.15 Farms; special use value; legal description of property. An executor of an estate may perfect an election of special use valuation within the required time period where the notice of election failed to contain a legal description of the qualifying real property. §20.2032A-8. (Sec. 2032A, '54 Code.)

Rev. Rul. 85-84, 1985-1 C.B. 326.

174.16 Farms; special use value; material participation; self-employment tax. For purposes of satisfying the material participation requirements for special use valuation under section 20.2032A-3(e), whereby all self-employment taxes determined to be due must be paid, the taxes required to be paid include only those that are not barred by the statute of limitations. §§20.2032A-3, 20.2053-4, 301.6501(a)-1. (Secs. 2032A, 2053, 6501; '54 Code.)

Rev. Rul. 83-32, 1983-1 C.B. 226.

174.17 Farms; special use value; premature disposal; interest. When an election to specially value property has been made under section 2032A and the property is later disposed of prematurely, interest on the additional estate tax due will be assessed for the period commencing 6 months after the date of disposition. §§20.2032A-8, 20.6151-1, 301.6601-1. (Secs. 2032A, 6151, 6601; '54 Code.)

Rev. Rul. 81-308, 1981-2 C.B. 176.

174.18 Farms; special use value; special power. An executor can elect to specially value a farm under section 2032A when the decedent bequeathed a life estate to a qualified heir with a special power to appoint the remainder to other than qualified heirs and the heir makes a qualified disclaimer of the power, causing the remainder interest to vest in a qualified heir. §20.2032A-8. (Secs. 2032A, 2046, 2518; '54 Code.)

Rev. Rul. 82-140, 1982-2 C.B. 208.

174.19 Farms, special use value; state death tax credit; liens. The section 2011 credit, used under section 2032A(c)(2)(C) in computing what would have been the estate tax liability but for the section 2032A election, is derived with respect to three different types of state death tax statutes. The computation is made for the purpose of determining the amount of the lien imposed by section 6324B. §20.2011-1. (Secs. 2011, 2032A, 6324B; '54 Code.)

Rev. Rul. 82-35, 1982-1 C.B. 128.

174.20 Farms; special use value; unpaid mortgage; claims against the estate A mortgage for which the decedent's estate is liable is fully deductible under section 2053 if all of the secured property is included in the gross estate, even though the property has been valued in a section 2032A election. §§20.203A-3, 20.2053-7. (Secs. 2032A, 2053; '54 Code.)

Rev. Rul. 83-81, 1983-1 C.B. 230.

174.21 Farms; special use value and eligible joint interest elections. The portion of an eligible joint interest includible in a decedent's gross estate under section 2040(c) is computed using the fair market value as the "value of such interest" under section 2040(c)(1)(A) even though the estate has elected the special use valuation for the interest under section 2032A. (Secs. 2040, 2032A, '54 Code.)

Rev. Rul. 81-146, 1981-1 C.B. 468.

174.22 Grazing lease in conjunction with farm. Two methods are described for valuing farmland for federal estate tax purposes where the farm is used in conjunction with a grazing permit on nearby federal land. §§20.2031-1, 20.2032A-4. (Secs. 2031, 2032A; '54 Code.)

Rev. Rul. 86-99, 1986-33 I.R.B. 6.

174.23 Partial revocation of section 2032A election. Procedures are provided for electing to value less than all qualified real property in a decedent's gross estate under section 2032A where an election to value all the qualified real property under section 2032A was previously made on or before August 30, 1980. §20.2032A-8. (Sec. 601.105, S.P.R.; Sec. 2032A, '54 Code.)

Rev. Proc. 80-49, 1980-2 C.B. 816.

174.24 Proprietorship; fair market value. In computing the limitation on the amount of estate tax that may be paid in installments under section 6166A, the value of a decedent's interest as a proprietor in a trade or business carried on as a proprietorship is the net amount a willing purchaser would pay for the interest to a willing seller. §§20.2031-1, 20.2031-3, 20.6166-1. (Secs. 2031, 6166, 6166A; '54 Code.)

Rev. Rul. 80-202, 1980-2 C.B. 363.

174.25 Special use; elections; claims for credit or refund. Guidelines are set forth for filing and reinstating elections and for filing claims for credit or refund for estates qualifying for special use valuation under the retroactive provisions of the Economic Recovery Tax Act of 1981. §20.2032A-8. (Sec. 601.105, S.P.R.; Sec. 2032A, '54 Code.)

Rev. Proc. 82-9, 1982-1 C.B. 413.

174.26 Special use; property used in more than one trade or business. For purposes of the 25 percent test of section 2032A(b)(1)(B), the aggregation of the adjusted value of real estate in different businesses is allowable and, for purposes of the 50 percent test of section 2032A(b)(1)(A), aggregation of the adjusted value of personalty is allowable if associated with real estate that otherwise meets the requirements of that test. (Sec. 2032A, '54 Code.)

Rev. Rul. 85-168, 1985-42 I.R.B. 10.

174.27 Special use; retroactive election. Estates that were previously eligible for, but did not timely elect section 2032A valuation, cannot retroactively elect special use valuation under section 421(k)(5) of the Economic Recovery Tax Act of 1981. §20.2032A-1. (Sec. 2032A, '54 Code.)

Rev. Rul. 82-62, 1982-1 C.B. 130.

174.28 Special use; stock in corporate farmland bequeathed to qualified heir; increase in heir's equity interest due to redemption. A decedent bequeaths to a qualified heir stock in a corporation, the principal asset of which is farmland. The decedent's executor causes the corporation to redeem a portion of its shares and distributes the remaining shares to the qualified heir. The application for the special valuation rules in this situation is explained. §20.2032A-3. (Sec. 2032A, '54 Code.)

Rev. Rul. 85-73, 1985-1 C.B. 325.

174.29 Special use valuation; acknowledged child; Illinois. For purposes of electing special use valuation, an acknowledged child under Illinois law does not qualify as a legally adopted child within the meaning of section 2032A(e)(2). (Sec. 2032A, '54 Code.)

Rev. Rul. 81-179, 1981-2 C.B. 172.

174.30 Special use valuation; qualified heir; widow or widower of lineal descendant. For purposes of electing special use valuation, the widow or widower of the decedent's lineal descendant is a qualified heir. (Sec. 2032A, '54 Code.)

Rev. Rul. 81-236, 1981-2 C.B. 172.

General

176.1 Annuity contracts. The standard rate tables contained in Rev. Rul. 62-216 are to be used in valuing annuity contracts issued by an organization such as a corporation, trust, fund or foundation (other than a commercial insurance company) for estate tax purposes. Rev. Rul. 62-216 clarified. Amplified by Rev. Ruls. 72-438 and 84-162. §§20.2031-7, 25.2512-5. (Secs. 72, 2031, 2512; '54 Code.)

Rev. Rul. 67-39, 1967-1 C.B. 18.

176.2 Annuity contracts. Revised annuity rate tables to be used in valuing life annuity contracts issued after September 18, 1972, by an organization such as a corporation, trust, fund or foundation (other than an insurance company) in exchange for money or other property are provided. Further, tables for valuing so-called deferred annuity contracts issued by such organizations are also included. Rev. Ruls. 62-216 and 67-39 amplified.§§20.2031-1, 20.2055-1. (Secs. 72, 101, 170, 1011, 2031, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 72-438, 1972-2 C.B. 38.

176.3 Annuity contracts; revised rate tables. The valuation tables that appear in regs. 25.2512-5 and 20.2031-7, are to be used in valuing annuity contracts issued by an organization such as a corporation, trust, fund, or foundation (other than an insurance company) for gift tax and estate tax purposes respectively. §§20.2031-7, 25.2512-5. (Secs. 2031, 2512; '54 Code.)

Rev. Rul. 84-162, 1984-46 I.R.B. 8.

176.4 Charitable income interest. The value of an income interest may be computed by use of the actuarial tables prescribed in section 20.2031-7 of the regulations provided the entire amount (or a specific fraction) of the income from the transferred property is receivable by the income beneficiary. Where a bequest provides that the annual income only up to three and one-half percent of the value of the subject property is payable to charity, the tables are not applicable in the valuation of the charitable interest, and a deduction is not allowable under section 2055 of the Code. Similarly, the gift tax charitable deduction is not allowable with respect to comparable inter vivos gifts.§§20.2031-7, 20.2055-2, 25.2512-5, 25.2522(a)-2. (Secs. 2031, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 67-195, 1967-1 C.B. 267.

176.5 Charitable remainder trust. Where an irrevocable trust provides that capital gain dividends received from stock in regulated investment companies shall be treated as corpus and held for the charitable remainderman rather than distributed to the noncharitable life tenant, the present worth of the remainder interest is deductible and may be valued by the use of the appropriate actuarial remainder table. However, where such capital gain dividends are treated as income and paid to the life tenant, the charitable interest is not severable since no formula is available for ascertaining its value and no charitable deduction is allowable. Rev. Rul. 55-620 revoked. Supplemented by Rev. Rul. 67-33.§20.2055-2. (Sec. 2055, '54 Code.)

Rev. Rul. 60-385, 1960-2 C.B. 77.

176.6 Civil service annuity; surviving children. Actuarial tables are set forth to determine the present value of temporary annuities payable under the Civil Service Retirement System to eligible children of deceased employees based on 31/2 percent interest for purposes of computing the amount excludable from gross estate with respect to estates of decedents dying on or before December 31, 1970, and 6 percent with respect to decedents dying after that date.§§20.2031-7, 20.2031-10, 20.2039-2. (Secs. 2031, 2039; '54 Code.)

Rev. Proc. 71-6, 1971-1 C.B. 664; Rev. Proc. 71-7, 1971-1 C.B. 671.

176.7 Common trust funds; valuation date; fair market value. Guidelines are provided for the determination of the fair market value of participating interests in the common trust fund between the bank valuation dates for purposes of sections 2031, 2032 and 2512. A formula is provided for valuing participating interests in the common trust funds when the valuation date for estate and gift tax purposes does not coincide with the bank valuation date. §§20.2031-2, 20.2032-1, 25.2512-1. (Sec. 601.105, S.P.R.; Secs. 584, 2031, 2032, 2512, '54 Code.)

Rev. Proc. 84-17, 1984-1 C.B. 432.

176.8 Date and time of death; nonresident citizens. The date and time of death of a nonresident citizen of the U.S. who died in the foreign country of his domicile is the established day and time in the place of his domicile at the instant of death. Rev. Rul. 66-85 modified.§20.2031-1. (Sec. 2031, '54 Code.)

Rev. Rul. 74-424, 1974-2 C.B. 294.

176.9 Date and time of death; resident citizens. Where a U.S. citizen dies in one time zone while domiciled in the U.S. in another zone, the time and date of decedent's death for Federal estate tax purposes is the time and date prevailing at the instant of death in his domicile and the place where the estate tax return is to be filed. Modified by Rev. Rul. 74-424.§20.2031-1. (Sec. 2031, '54 Code.)

Rev. Rul. 66-85, 1966-1 C.B. 213.

176.10 Death of remainderman before life tenant; married woman aged 44. Under the terms of an irrevocable trust, a decedent or his estate was entitled to receive certain property on the death without issue of the life tenant, a married woman aged 44 living with her husband, who had never had children, though was still believed to be capable of having issue. The value of the remainder interest, even though not susceptible of valuation under actuarial rules, should be evaluated in accordance with the general rules of the valuation of property, and be included in the decedent's gross estate.§20.2031-1. (Sec. 2031, '54 Code.)

Rev. Rul. 61-88, 1961-1 C.B. 417.

176.11 Deferred unitrust interest. The applicable method of computation under section 2032 of the Code is explained for determining the present value of a deferred unitrust interest of a life beneficiary who dies before receiving any distribution from the trust, the terms of which specify that section 1.664-1(a)(5) of the regulations shall be used to retroactively determine the unitrust amount due.§20.2031-10. (Secs. 664, 2031; '54 Code.)

Rev. Rul. 77-471, 1977-2 C.B. 322.

176.12 Dividends payable after death. Dividends declared before death, but made payable after death, are to be added to the fair market value of the stock when the stock is listed on an exchange and is quoted ex-dividend on the date of death.§81.13. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 54-399, 1954-2 C.B. 279.

176.13 Goodwill. Although the bylaws of a corporation contain a binding agreement, effective only upon a shareholder's death, providing for the sale to the corporation of the shareholder's interest in the business at a price which does not reflect consideration for goodwill, the Commissioner would not be precluded from evaluating the shareholder's interest in the business to include goodwill.§§81.10(c), 81.10(d). (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 157, 1953-2 C.B. 255.

176.14 Income from reversionary trust. The valuation method employing an annual interest rate of 6 percent prescribed in sections 20.2031-10(a)(1) and 25.2512-9(a)(1)(i) of the regulations may not be disregarded with respect to a bequest or gift of an income interest in trust solely because the stock constituting the entire corpus of the trust has for the preceding ten years paid an average dividend yielding only 3 percent.§20.2031-10. (Secs. 2031, 2512; '54 Code.)

Rev. Rul. 77-195, 1977-1 C.B. 295.

176.15 Interest passing to surviving spouse; marital deduction. The value of certain property in, and passing into, a marital deduction trust, created by a decedent's will and trust instrument, need not be reduced for purposes of section 2056 by reason of Massachusets State inheritance taxes on the future interest in the marital deduction trust which become payable upon the death of the decedent's spouse, the life tenant of that trust. (Sec. 2056, '54 Code.)

Arthur Milliken, 70 T.C. 883, Acq., 1979-1 C.B. 1.

176.16 Jointly owned mortgage; deceased spouse's interest. The value of a purchase money mortgage held by spouses as tenants by the entirety at the time of one spouse's death is unaffected by a provision that the mortgage is cancelled upon the death of the surviving spouse if it is held and owned by the survivor and the original mortgagor retains ownership of the mortgaged property. §§20.2031-4, 20.2040-1. (Secs. 2031, 2040; '54 Code.)

Rev. Rul. 76-112, 1976-1 C.B. 276.

176.17 Land contracts; Michigan. Contractual claims of the holder of a "land contract" in Michigan are valued, for federal estate tax purposes, in the same manner as notes, since the transferor of land conveyed by use of such a contract is entitled to money payments and retains, in essence, only a security interest in the land.§20.2031-4. (Sec. 2031, '54 Code.)

Rev. Rul. 66-342, 1966-2 C.B. 431.

176.18 Life expectancy tables v. actual life expectancy. Actuarial tables are only evidentiary and need not be controlling where the facts as to longevity are known on the valuation date. (Sec. 811(g), '39 Code; Sec. 2042, '54 Code.)

John Halliday Denbigh, 7 T.C. 387, Acq.; Huntington National Bank of Columbus, 13 T.C. 760, Acq.; Nicholas Murry Butler, 18 T.C. 914, Acq.; 1953-1 C.B. 3, 4.

176.19 Life insurance policy; life of another. A single premium life insurance policy owned by a decedent for many years on the life of another person may not be valued, under section 20.2031-8(a) by comparing the cost, at the time of decedent's death, of a similar policy of the same face amount with a lesser cash surrender value.§20.2031-8. (Sec. 2031, '54 Code.)

Rev. Rul. 78-137, 1978-1 C.B. 280.

176.20 Life insurance policy; life on another; split-dollar. A decedent made an agreement with the employer of the decedent's spouse to purchase a life insurance policy under a split-dollar arrangement on the employee-spouse's life, giving the decedent ownership of the policy. The employer agreed to pay that portion of the annual premium that was equal to the increase in the cash surrender value during the year and was entitled to receive from the proceeds an amount equal to the cash surrender value. The policy had been in force for some time and further premium payments were to be made after the decedent's death. The value of the policy that is includible in the gross estate is the difference between the interpolated terminal reserve and the cash surrender value. §§20.2031-8, 20.2033-1. (Secs. 2031, 2033; '54 Code.)

Rev. Rul. 79-429, 1979-2 C.B. 321.

176.21 Life insurance policy held as community property. A Texas-resident husband and wife had owned for some time, as community property, an ordinary life insurance policy on the husband's life designating their children as beneficiaries. The wife predeceased her husband by 10 days, her entire estate was bequeathed to the children, and there was no settlement of her interest in the policy prior to the husband's death. The amount includible in the wife's gross estate is one-half the value of the policy, on the date of her death, determined by the terminal-reserve method under section 20.2031-8(a)(2) of the regulations and one-half the value of the policy proceeds is includible in the husband's gross estate. Rev. Rul. 48 modified. §§20.2031-8, 20.2033-1, 20.2042-1. (Secs. 2031, 2033, 2042; '54 Code.)

Rev. Rul. 75-100, 1975-1 C.B. 303.

176.22 Life insurance policy proceeds. The decision in *Kohl and Harley,* which held that to apply the provisions of section 811(g) of the 1939 Code, as amended by section 404 of the Revenue Act of 1942, to the proceeds of the insurance policies involved in that case would result in a direct tax without the apportionment required by Article 1, Section 2, and Article 1, Section 9, of the Constitution of the United States, and would result in retroactive taxation in violation of the Fifth Amendment to the Constitution, will not be followed by the Service as a precedent in the disposition of other cases involving a similar factual situation.§81.27. (Sec. 811(g), '39 Code; Sec. 2042, '54 Code.)

Rev. Rul. 56-250, 1956-1 C.B. 659.

176.23 Life insurance proceeds; simultaneous deaths. The value of insurance to be included in the estates of two individuals, each of whom owned an insurance policy on the life of the other and both of whom died in circumstances in which each was considered to have been the survivor under the state's Uniform Simultaneous Death Act, is the interpolated terminal reserve at the date of the insured decedent's death plus the proportionate part of the gross premium last paid before the date of the insured's death that covers the period extending beyond that date.§§20.2031-8, 20.2033-1. (Secs. 2031, 2033; '54 Code.)

Rev. Rul. 77-181, 1977-1 C.B. 272.

176.24 Marital deduction. The estate tax marital deduction may not be waived in order to obtain a Federal estate tax benefit or for any other purpose.§§20.2013-1, 20.2056(a)-1. (Secs. 2013, 2056; '54 Code.)

Rev. Rul. 59-123, 1959-1 C.B. 248.

176.25 Mortgaged real property in New York; nonresident aliens. Decedent, a nonresident alien, owned real estate in New York City subject to outstanding mortgages. *Held,* under New York law, the property alone and not the decedent's estate is liable for the mortgage indebtedness. Accordingly, the value of decedent's equity of redemption in the real estate, and not its fair market value, is includible in the gross estate. (Secs. 812(b), 861(a), '39 Code; Secs. 2051, 2103, 2106, '54 Code.)

Harcourt Johnstone, 19 T.C. 44, Acq., 1953-1 C.B. 5.

176.26 Mortgages and mortgage participation certificates. Where it is contended that the actual value of mortgages and mortgage participation certificates are less than their face value, the burden of proof is upon the estate to establish the lower value of such assets. All available financial data as well as all relevant factors affecting the fair market value must be submitted to the Service for consideration in determining the value of such assets. E.T. 8 superseded.§20.2031-4. (Sec. 2031, '54 Code.)

Rev. Rul. 67-276, 1967-2 C.B. 321.

176.27 Mutual fund shares. Mutual fund shares are to be valued for estate tax purposes at the redemption or "bid" price for which the mutual fund redeems its shares from its shareholders; section 20.2031-8(b) of the regulations requiring such shares to be valued at the public offering price is held to be unreasonable and invalid.§20.2031-8. (Sec. 2031, '54 Code.)

Cartwright, 411 U.S. 546, Ct. D. 1957, 1973-1 C.B. 400.

176.28 Mutual fund shares. Participating agreements in a mutual fund owned by a decedent are valued at their liquidation price. (Secs. 2013, 2031; '54 Code.)

Isabelle M. Sparling, 60 T.C. 330, Acq., 1978-1 C.B. 1.

176.29 Partnership earnings and insurance proceeds. The Tax Court held that, in evaluation of decedent's interest in a partnership for purposes of the Federal estate tax, his share of the current earnings should not be included in the decedent's gross estate where under the partnership agreement, those earnings were payable to the surviving partner and taxable to him as income. The Court also held that the proceeds of ten insurance policies on the decedent's life should not be included in his gross estate where the policies were assigned to the partnership and all premium payments after the assignment were made by the partnership. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Frank H. Knipp, 25 T.C. 153, Acq., 1959-2 C.B. 5.

176.30 Partnership interest. At decedent's death in 1948 the market value of his interest in a partnership was almost twice the book value. Agreements entered into in 1943 by the partners provided that if a partner died his estate would receive the book value of his interest, and that the surviving partners would settle in unsecured notes, or in preferred stock if the partnership were incorporated, payable or redeemable ratably over 10 years. A 1946 agreement provided that certain insurance policies would be taken out on decedent's life and the proceeds used to settle with his estate, that the other partners would be responsible for payment of the premiums and have all the incidents of ownership, and that decedent would not dispose of his partnership interest during his life except by mutual consent of all the parties. *Held,* the several agreements restricted decedent's right of disposition prior to death and fixed the price he or his estate could receive; therefore, the interest was includible in his estate at book value rather than market value. (Sec. 811(a), '39 Code; Sec. 2033, '54 Code.)

Lionel Weil, 22 T.C. 1267, Acq., 1955-2 C.B. 10.

176.31 Partnership interest; market versus book value. A partnership agreement restricted the right of the decedent to transfer or assign his partnership interest during his life, and granted the surviving partners an option to purchase, within 90 days of his death, the decedent's interest at its book value. *Held,* where the right of sale during the decedent's lifetime had been effectively restricted, the decedent's interest in the partnership was limited to the option price fixed by the agreement even though it was less than the fair market value on the date of the decedent's death. (Sec. 811, '39 Code; Sec. 2031, '54 Code.)

Angela Fiorito, 33 T.C. 440, Acq., 1960-1 C.B. 4.

176.32 Personal property sold at auction or through newspaper. Where there is a bona fide sale of an item of personal property includible in a decedent's gross estate, as the result of an advertisement in the classified section of a newspaper and the property is of a type often sold by owners by such means, or there is a bona fide sale of an item of such property at a public auction, the price for which it is sold will be presumed to be the retail sales price of the item at the time of the sale. Such price will also be presumed to be the retail sales price of the item on the applicable valuation date if the sale is made within a reasonable period following the applicable valuation date and there is no substantial change in market conditions or other circumstances affecting the value of similar items.§20.2031–1. (Sec. 601.105, S.P.R.; Sec. 2031, '54 Code.)

Rev. Proc. 65–19, 1965–2 C.B. 1002.

176.33 Prior transfers; imminent death of transferee. The principle of valuation stated in *Nellie H. Jennings,* and similar cases, where the death of a life tenant from known causes is predictable and imminent on the valuation date, may be applied in determining the value at date of transferor's death of a transferee's life or remainder interest for purposes of section 2013. However, it may not be applied in computing the value of a decedent's reversionary interest for purposes of sections 2037(b) and 2042(2). Clarified by Rev. Rul. 80–80. §§20.2013–4, 20.2037–1, 20.2042–1. (Secs. 2013, 2037, 2042; '54 Code.)

Rev. Rul. 66–307, 1966–2 C.B. 429.

176.34 Prior transfers; imminent death of transferee. The actuarial tables set forth in the regulations may be disregarded in valuing annuities, life estates, terms for years, remainders, and reversions for estate and gift tax purposes only if the individual is known to have been afflicted, at the time of transfer, with an incurable physical condition that is in such an advanced stage that death is clearly imminent. Rev. Rul. 66–307 clarified. §§20.2013–4, 20.2031–10, 20.2037–1, 20.2042–1, 20.2055–2, 25.2512–9, 25.2522(c)–3. (Secs. 2013, 2031, 2037, 2042, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 80–80, 1980–1 C.B. 194.

176.35 Prior transfers; power to divert trust income impliedly limited. A credit for tax on prior transfers is allowable with respect to a decedent-transferee's residuary interest in trust property where the trustee's power to divert trust income to the deceased transferor's spouse is impliedly limited by a definite ascertainable standard.§20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 70–292, 1970–1 C.B. 187.

176.36 Prior transfers; remainder interest. The value of a remainder interest received in 1970 will be based upon the 3½-percent acturial tables contained in section 20.2031–7 of the regulations for purposes of the credit for tax on prior transfers in the estate of the beneficiary who died in 1974. §20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 75–293, 1975–2 C.B. 357.

176.37 Prior transfers; residuary trust. An illustration is given of the correct method of computing the value, for purposes of the credit provided by section 2013, of a decedent's interest in a residuary trust that was subject to the discretionary power of the trustee to invade corpus for the benefit of others. §20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 75–550, 1975–2 C.B. 357.

176.38 Prior transfers; reversionary interest. An illustration is given of the method for determining whether and to what extent a decedent's gross estate should include an interest in real property transferred in trust by the male decedent to a female donee, pursuant to an agreement which provided that the decedent would give the donee a life interest in income-producing real property, and that the property would revert to the decedent if he survived the donee; but, if the donee survived the decedent, then the property would pass to the decedent's child or the child's estate upon the donee's death. §20.2037–1. (Sec. 2037, '54 Code.)

Rev. Rul. 76–178, 1976–1 C.B. 273.

176.39 Prior transfers; stock subject to buy-sell agreement. For purposes of computing the credit for tax on prior transfers, stock of a closely held corporation that could have been the subject of a lifetime transfer at any price, but that was subject to a buy-sell agreement under which the legatee was required to and did sell the stock to the remaining shareholders at a specified price that was less than its then fair market value, is valued in the estate of the legatee at the price at which the stock was sold to the other shareholders. Each of the remaining shareholders will be entitled to a credit for tax on prior transfers for a proportionate part of the difference between the specified sale price and the fair market value of the stock.§20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 78–58, 1978–1 C.B. 279.

176.40 Property; death before sale completed; buyer's "points" assumed by seller/decedent. An individual entered into an arm's length agreement to sell a personal residence and to pay mortgage "points" for the buyer that were to be deducted from the sale proceeds, but died before consummating the sale. The amount includible in the individual's gross estate is the sales price of the property less the "points" assumed by the seller, and the "points" are not deductible. §§20.2031–1, 20–2053–4. (Secs. 2031, 2053; '54 Code.)

Rev. Rul. 80–319, 1980–2 C.B. 252.

176.41 Property; factors affecting value. The Tax Court determined the fair market value of an apartment building at the date of the decedent's death, after considering all the evidence concerning the building, including its location and condition, the gross and net income derived therefrom, and the testimony of expert witnesses. (Sec. 811(c), '39 Code; Sec. 2035, '54 Code.)

Theodore Geddings Tarver, 26 T.C. 490, Acq., 1958–2 C.B. 8.

176.42 Property not susceptible of valuation at transferor's death. Where a decedent-transferee received a property interest which was not susceptible of valuation by recognized valuation principles on the date of death of the transferor, a credit under section 2013 of the Code for Federal estate tax paid on the transfer of such an interest from the estate of the transferor is not allowed against the Federal estate tax imposed upon the estate of the decedent-transferee. §20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 67–53, 1967–1 C.B. 265.

176.43 Property transferred in contemplation of death. The value of property includible in the gross estate as a result of a transfer in contemplation of death is the fair market value of the property actually transferred as of the decedent's death, not the value of whatever substitute property that may be held by the donee at that time.§20.2035–1. (Sec. 2035, '54 Code.)

Rev. Rul. 72–282, 1972–1 C.B. 306.

176.44 Property transferred in contemplation of death; encumbered by transferee. The value of real property transferred by a decedent in contemplation of death, and subsequently mortgaged by the transferee as security for a loan that did not benefit the decedent, is includible in the decedent's gross estate without reduction for the amount of the unpaid mortgage. §§20.2035–1, 20.2053–7. (Secs. 2035, 2053; '54 Code.)

Rev. Rul. 76–235, 1976–1 C.B. 277.

176.45 Radio and television broadcasting stations. Guidelines are set forth for the determination of fair market values of radio and television broadcasting stations and for the allocation of a lump-sum purchase price of a station between depreciable and nondepreciable assets. §§20.2031–1, 25.2512–3. (Sec. 601.105, S.P.R.; Secs. 167, 334, 2031, 2512, '54 Code.)

Rev. Proc. 75–39, 1975–2 C.B. 569.

176.46 Real property; market data approach. Guidance is provided to utilize the market data approach in appraising unimproved real property. §§20.2031–1, 25.2512–1. (Sec. 601.105; Secs. 170, 2031, 2512, '54 Code.)

Rev. Proc. 79–24, 1979–1 C.B. 565.

176.47 Remainder interest subject to future diminution. A decedent's vested remainder interest in property as one of a class composed of the issue of the life tenant, the decedent's 53-year old mother, is valued by the formula set forth in section 20.2031–10(d) of the regulations with consideration then given to possible future diminution by reason of decedent's mother bearing or adopting children. §20.2031–1. (Sec. 2031, '54 Code.)

Rev. Rul. 76–472, 1976–2 C.B. 264.

176.48 Requests for special actuarial factors. The information is described that must accompany a request for the Commissioner to furnish a special actuarial factor as provided in regs. 20.2031–10(e) and 25.2512–9(e). §§20.2031–10, 25.2512–9. (Sec. 601.201, S.P.R.; Secs. 2031, 2512, '54 Code.)

Rev. Proc. 78–21, 1978–2 C.B. 301.

176.49 Residuary estate; administration expenses. Where the transferor bequeaths an interest in his residuary estate, the value of the property transferred for purposes of section 2013 is computed on the net value of the residuary estate after deducting all of the administration expenses whether taken as deductions under section 2053 for Federal estate tax purposes or under sections 162 or 212 of the Code for income tax purposes.§20.2013–4. (Sec. 2013, '54 Code.)

Rev. Rul. 66–233, 1966–2 C.B. 428.

176.50 Right to partnership earnings. A partnership agreement provided that upon the death of a partner, his estate was to receive a share of the partnership profits for a definite period after his death. This contractual right is property in which the decedent had an interest at the time of his death, and the value of the right must be included in his gross estate.§20.2033–1. (Sec. 2033, '54 Code.)

Rev. Rul. 66–20, 1966–1 C.B. 214.

176.51 Savings certificates; death between interest payments. A decedent, on the date of death, owned non-negotiable savings certificates, issued without discount, that may be redeemed before maturity without penalty upon the death of the owner. The certificates will be valued at the face amount plus unpaid interest attributable to the period from the date of the last interest payment to the date of death. §20.2031–1. (Secs. 691, 2031; '54 Code.)

Rev. Rul. 79–340, 1979–2 C.B. 320.

176.52 Securities; Treasury bonds. Listed securities and Treasury bonds must be valued and reported in dollar fractions smaller than eights or thirty-seconds, respectively, *if the mean selling* price on the applicable valuation date results in a smaller fraction.§§20.2031–2, 25.2512–2. (Secs. 2031, 2512; '54 Code.)

Rev. Rul. 68–272, 1968–1 C.B. 394.

176.53 Shares in mutual funds. The Service will not disturb the valuation prior to October 11, 1963, of shares in an open-end investment company, which are returned on the basis of the redemption value or the mean between the redemption value and the public offering price, provided that, if requested by the district director, a collateral agreement is furnished by all the interested parties that the value so determined will be treated by the executor and all distributees as the tax basis of any shares so valued.§20.2031–8. (Sec. 601.105, S.P.R.; Sec. 2031, '54 Code.)

Rev. Proc. 64–18, 1964–1 (Part 1) C.B. 681.

176.54 Silver coins. U.S. silver coins held by a decedent at death and having a fair market value in excess of their face value are valued for estate tax purposes at their fair market value, whether or not the decedent was a dealer in coins or currency or a collector. The same treatment would apply to paper currency having a fair market value in excess of its face value. §20.2031–1. (Sec. 2031, '54 Code.)

Rev. Rul. 78–360, 1978–2 C.B. 228.

176.55 Stock; blockage discount; underwriting fees. Underwriting fees that are incurred in marketing a large block of stock are not considered in determining blockage discount to be accorded in valuing the stock under section 2031, but are deductible as an administration expense under section 2053(a)(2). §§20.2031–2, 20.2053–3. (Secs. 2031, 2053; '54 Code.)

Rev. Rul. 83–30, 1983–1 C.B. 224.

176.56 Stock; closely held corporation; book v. fair market value. A decedent entered into an agreement providing that his estate would sell the stock in a closely held corporation to that corporation at book value and later, entered into a second agreement holding that if the Commissioner disregarded the book value for estate tax valuation purposes the stockholders would release the estate from the earlier agreement and include the stock in the estate at fair market value. *Held,* the second agreement was valid and the parties are released from the obligations of the first agreement. (Sec. 2031, '54 Code.)

Edward E. Dickinson, Jr. 63 T.C. 771, Acq., 1977–2 C.B. 1.

176.57 Stock; closely held corporation; transfer in contemplation of death. An individual who owned a controlling stock interest in a closely held corporation transferred a minority stock interest that was included in the individual's gross estate as a transfer in contemplation of death. The minority interest transferred and the stock retained by the individual until death are treated as one block of shares in determining the value of the stock interest includible in the gross estate. §§20.2031–1, 20.2035–1. (Secs. 2031, 2035; '54 Code.)

Rev. Rul. 79–7, 1979–1 C.B. 294.

176.58 Stock; closely held or no fair market value; intangible assets. In valuing the stock of closely-held corporations, or the stock of corporations where market quotations are not available, all other available financial data, as well as all relevant factors affecting the fair market value must be considered. The general approach methods, and factors which must be considered in valuing such securities are outlined. Section 4.02(f) is modified to eliminate the rule that the value of intangible assets of a business may be measured by the amount by which the appraised value of the tangible assets exceeds the net book value of such assets. Amplified by Rev. Rul. 77–287. Rev. Rul. 54–77 superseded. Modified by Rev. Rul. 83–120. §§81.10, 20.2031–2. (Sec. 811(k), '39 Code; Sec. 2031, '54 Code.)

Rev. Rul. 59–60, 1959–1 C.B. 237; Rev. Rul. 65–193, 1965–2 C.B. 370.

176.59 Stock; control of corporation obtained by executors. At his death decedent held 240,801 shares of common stock in a corporation which had a total of 721,765 shares outstanding. After decedent's death, but before the alternate valuation date, the executors obtained effective control of the corporation by employing the voting power of the estate's block of stock, of stock which they owned individually, and of proxies obtained from other stockholders. *Held,* the block of stock owned by the estate did not, in itself, represent actual or effective control of the corporation; accordingly, the price at which the stock was sold in the over-the-counter market adequately reflected its true value. (Sec. 2031, '54 Code.)

Robert H. Damon, 49 T.C. 108, Acq., 1968–2 C.B. 2.

176.60 Stock; corporate option to repurchase. Where a stockholder acquires stock from a corporation subject to an option reserved to the corporation in the articles of organization to repurchase the stock at a specific price before any sale or transfer, including any transfer at the death of the stockholder, can be validly made to others, the option price, in the absence of other material circumstances, will be accepted as the fair market value at the date of death, especially where the option is exercised by the corporation.§§81.10(c), 81.13. (Secs. 811(a), 811(k), '39 Code; Secs. 2033, 2037, '54 Code.)

Rev. Rul. 54–76, 1954–1 C.B. 194.

176.61 Stock; recapitalization of closely held business. The significant factors in deriving the fair market value of preferred and common stock received in certain corporate reorganizations are discussed. Rev. Rul. 59–60 amplified. §§20.2031–2, 25.2512–2. (Secs. 305, 351, 354, 368, 2031, 2512; '54 Code.)

Rev. Rul. 83–120, 1983–1 C.B. 170.

176.62 Stock; restricted. Guidelines are set forth for the valuation, for Federal tax purposes, of securities that cannot be immediately resold because they are restricted from resale pursuant to Federal securities laws. Rev. Rul. 59–60 amplified.§§20.2031–2, 20.2032–1. (Secs. 170, 2031, 2032, 2512; '54 Code.)

Rev. Rul. 77–287, 1977–2 C.B. 319.

176.63 Stock; selling ex-dividend on Monday. In valuing listed stocks where the decedent died on a weekend and such stocks were selling ex-dividend on the trading day immediately subsequent thereto, the amount of the dividend must be added to the mean of the ex-dividend quotations.§20.2031–2. (Sec. 2031, '54 Code.)

Rev. Rul. 68–610, 1968–2 C.B. 405.

176.64 Stock; wholly owned corporation; insurance proceeds. Proceeds of a company owned insurance policy on the life of the decedent who had been the president and sole shareholder of the company are treated in the same manner as any other asset in valuing the stock of the corporation and are not added dollar for dollar to the value of the stock determined without regard to the insurance proceeds. (Sec. 2031, '54 Code.)

John L. Huntsman, 66 T.C. 861, Acq., 1977–1 C.B. 1.

176.65 Stock redemption; wholly owned corporation; insurance proceeds. Proceeds of a life insurance policy on a decedent's life, payable to a wholly owned corporation of the decedent and then to the decedent's estate pursuant to a stock redemption agreement, should be reflected in the valuation of the decedent's stock, which is included in the decedent's gross estate under section 2033. The insurance proceeds are not separately included in the decedent's gross estate under section 2042. §§20.2031–2, 20.2033–1, 20.2042–1. (Secs. 2031, 2033, 2042; '54 Code.)

Rev. Rul. 82–85, 1982–1 C.B. 137.

176.66 Transfers in trust. The amount includible in the decedent's gross estate on account of property she had transferred to a trust created by her husband for their daughter's benefit, over which the decedent held discretionary powers as trustee, is not the percentage of the value of corpus represented by decedent's contribution immediately after the contribution was made as applied to the value of the total corpus on the valuation date. The value of assets identified as attributable to the husband's contributions must be excluded from the computation. (Sec. 2038, '54 Code.)

Nathalie F. Bell, 66 T.C. 729, Acq., 1977–2 C.B. 1.

176.67 Transfers in trust; retained interest. The retained interest to be included in the estate of a life income beneficiary of a testamentary trust, to which the beneficiary had made contributions of stock that remained in the trust at death, at which time the value of the stock could be easily ascertained, is the value of the stock at the time of death.§20.2036–1. (Sec. 2036, '54 Code.)

Rev. Rul. 78–74, 1978–1 C.B. 287.

176.68 Transfers to trust. Taxpayer was the life beneficiary of a trust, the principal of which was to be paid to her heirs-at-law upon her death. *Held,* property transferred by the life beneficiary as additions to the trust and held in trust until her death is to be included in her gross estate at the property's actual value as of the date of her death. (Sec. 2036, '54 Code.)

Anna Hart Kinney, 39 T.C. 728, Acq., 1964–1 (Part 1) C.B. 4.

176.69 Treasury bonds; redeemed to pay tax. The value or fair market value of certain marketable, U.S. Treasury bonds owned by a decedent at death, that could be redeemed at the option of the representatives of his estate at par value for paying Federal estate taxes, is the par value thereof or the mean between their highest and lowest quoted selling price at the time of his death (and accrued interest to the date of death), whichever is higher. Except in the case of redemption by substitution, the effective date described in Rev. Proc. 69–18 shall be considered the date the payment is made for purposes of section 6601(a) of the Code. Rev. Rul. 156 superseded in part.§§20.2031–1, 301.6601–1. (Secs. 2031, 6601; '54 Code.)

Rev. Rul. 69–489, 1969–2 C.B. 172.

176.70 Treasury bonds; redeemed to pay tax. The extent to which marketable U.S. Treasury bonds, owned by the decedent at death, may be redeemed and applied at par in payment of estate taxes will be determined at a redemption date designated by the estate representative, who may choose a date on which no interest is accrued to use the maximum amount of bonds, and the bonds will be valued under the provisions of Rev. Rul. 69–489. §20.2031–1. (Sec. 2031, '54 Code.)

Rev. Rul. 76–312, 1976–2 C.B. 262.

176.71 Treasury bonds; redeemed to pay tax. Under section 2031, the value of the decedent's Treasury bonds that could have been applied toward the portion of the federal estate tax that was deferred under section 6166 is their par value. §§20.2031–2. 20.6161–1, 20.6163–1, 20.6166–1, 20.6166A–1. (Secs. 2031, 6161, 6163, 6166, 6166A; '54 Code.)

Rev. Rul. 81–228, 1981–2 C.B. 171.

176.72 Trust; prior transfer of contingent remainder interest. A legally binding contract was entered into prior to the death of the life tenant between the two equal testamentary trust beneficiaries of contingent remainder interests providing that, if either predeceased the life tenant, then the survivor would transfer one-half of the trust corpus received to the heirs of the deceased. Upon the death of one of the beneficiaries prior to the death of the life tenant, the contract results in a transfer for purposes of section 2037. §§20.2033–1, 20.2037–1. (Secs. 2033, 2037; '54 Code.)

Rev. Rul. 82–24, 1982–1 C.B. 134.

176.73 U. S. savings bonds; Series G and K. The par value (principal amount) of U.S. savings bonds of Series G or K owned by a decedent at the time of his death constitutes the value at which the bonds are includible in his gross estate. Where the owner of such bonds dies between interest payment dates, no amount is includible in his gross estate as accrued interest from the last interest payment date to the date of death.§§81.10, 81.13. (Sec. 811, '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 55–301, 1955–1 C.B. 442.

176.74 Unexercised stock options. Payments by an employer to the estate of an employee-decedent as consideration for the surrender of employee stock options are included in the income of the employee's estate. The excess of the fair market value of the stock over the price at which the employee could have purchased it under the options is includible in the decedent's gross estate. The estate tax attributable to such excess may be deducted by the estate in computing its income tax.§81.13. (Sec. 811, '39 Code; Sec. 2033, '54 Code.)

Rev. Rul. 196, 1953–2 C.B. 178.

176.75 Voting trust certificates. In 1946, family members deposited their stock in a corporation, representing 51 percent control, into a 20-year voting trust for certificates. The trust agreement provided for prior termination or extension and contained pre-emption provisions which required a first-offer to other certificate holders and then to corporation employees before certificates could be sold. The pre-emption price was based on dividends and all transferred certificates remained subject to the terms of the agreement. Periodic inter-vivos gifts and transfers were made before and after death. On estate tax returns, the certificates were valued at the prevailing pre-emption price which was always substantially lower than the over-the-counter quote. *Held,* the pre-emption price was not determinative as to value but is a factor to be considered along with all other relevant valuation factors and neither the over-the-counter price of the underlying shares nor the formula price represented the absolute index of fair market value. (Secs. 2031, 2512; '54 Code.)

Pearl Gibbons Reynolds, 55 T.C. 172, Acq., 1971–2 C.B. 2.

176.76 Voting trust certificates. The estate adjusted current earnings by an extraordinary bad debt loss for purposes of applying a price-earnings ratio to arrive at a value, subsequently discounted, for a minority interest in closely held voting trust certificates. The Commissioner disallowed the bad debt deduction and the discount, basing the values on the assuption of a private sale of all the stock. *Held,* the bad debt deduction, while affecting furture earnings, does not affect the current earnings and is allowed; the discount was proper as the shares do not represent voting control. (Secs. 2031, 2035, 2512; '54 Code.)

Louis Zaiger, 64 T.C. 927, Acq., 1976–1 C.B. 1.

Waivers
(See: ADMINISTRATIVE: Extension of time)

Widow's allowance
(See: Marital deduction)

GIFT TAX

Abatements
(See: ADMINISTRATIVE: Refunds and credits)

Administration
(See: ADMINISTRATIVE)

Aliens
(See: Nonresidents; Residents)

Annuities

202.1 Charitable deduction; purchased from charitable organization. A taxpayer purchased from a charitable organization an annuity that is payable for the taxpayer's life from the general funds of the charity. A gift tax charitable deduction is allowable for the amount paid to the charity that exceeds the present value of the annuity. §25.2522(a)–1. (Sec. 2522, '54 Code.)

Rev. Rul. 80–281, 1980–2 C.B. 282.

202.2 Charitable remainder annuity trust; transfer. The transfer by the grantor/life-interest beneficiary and the successive life-interest beneficiary of their annuity interests in a charitable remainder annuity trust to the charitable beneficiary qualifies for the charitable deductions under sections 170 and 2522. §25.2522(c)–3. (Secs. 170, 664, 2522; '54Code.)

Rev. Rul. 86–60, 1986–17 I.R.B. 9.

202.3 Civil Service; transfer incident to agreement in contemplation of divorce. A retired federal employee, in contemplation of a divorce, entered into a written property settlement agreement providing that, after the divorce, the ex-spouse would receive one-half of the employee's annuity payments under the U.S. Civil Service Retirement System. Within two years thereafter, a divorce court that had no power to alter the agreement incorporated it into a divorce decree. The employee did not make a gift to the ex-spouse, because the transfer is deemed to be made for full and adequate consideration in money or money's worth under section 2516. §§20.2043–1, 25.2512–8, 25.2516–1. (Secs. 2043, 2512, 2516; '54 Code.)

Rev. Rul. 80–82, 1980–1 C.B. 209.

202.4 Contracts; valuation. The standard rate tables contained in Rev. Rul. 62–216 are to be used in valuing annuity contracts issued by an organization such as a corporation, trust, fund or foundation (other than a commercial insurance company) for gift tax purposes. Rev. Rul. 62–216 clarified. Amplified by Rev. Ruls. 72–438 and 84–162. §§20.2031–7, 25.2512–5. (Secs. 72, 2031, 2512; '54 Code.)

Rev. Rul. 67–39, 1967–1 C.B. 18.

202.5 Contracts; valuation. Revised annuity rate tables to be used for valuing life annuity contracts issued after September 18, 1972, by an organization such as a corporation, trust, fund or foundation (other than an insurance company) in exchange for money or other property are provided. Further, tables for valuing so called deferred payment annuity contracts issued by such organizations are set forth. Rev. Ruls. 62–216 and 67–39 amplified.§§25.2512–1, 25.2522(a)–1. (Secs. 72, 101, 170, 1011, 2031, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 72–438, 1972–2 C.B. 38.

202.6 Contracts; valuation; revised tables. The valuation tables that appear in regs. 25.2512–5 and 20.2031–7, are to be used in valuing annuity contracts issued by an organization such as a corporation, trust, fund, or foundation (other than an insurance company) for gift tax and estate tax purposes respectively. §§20.2031–7, 25.2512–5. (Secs. 2031, 2512; '54 Code.)

Rev. Rul. 84–162, 1984–46 I.R.B. 8.

202.7 Election of survivor benefits; civil service. A retiring Federal employee who elects to provide a survivorship annuity under the Civil Service Retirement System has made a gift of a future interest at the time the election and designation become irrevocable. Computation of the value of the gift is explained where the Government's contribution to the annuity is not readily ascertainable. Further, no part of the $3,000 annual exclusion is allowable; however, the lifetime specific exemption of $30,000 is applicable. §§25.2503–2, 25.2517–1. (Secs. 2503, 2517; '54 Code.)

Rev. Rul. 70–514, 1970–2 C.B. 198.

202.8 Election of survivor benefits; civil service; marital deduction. The election of a survivor annuity under the Civil Service Retirement System by a retiring Federal employee is a transfer for which the marital deduction is not allowable. §25.2523(a)–1. (Sec. 2523, '54 Code.)

Rev. Rul. 72–62, 1972–1 C.B. 311.

202.9 Election of survivor benefits; constructive receipt of employer contributions. A participant in a qualified noncontributory profit-sharing plan constructively receives a portion of employer contributions at the time that portions may first be withdrawn without penalty or restriction. A gift of that portion of the present value of a survivor benefit that corresponds to the constructively received contributions is a taxable gift when the participant retires and receives a joint and survivor annuity in lieu of electing to receive a larger individual annuity. §§25.2511–1, 25.2517–1. (Secs. 2511, 2517; '54 Code.)

Rev. Rul. 78–399, 1978–2 C.B. 250.

202.10 Election of survivor benefits; uniformed services. The value of survivor annuity benefits which, under the Survivor Benefit Plan and in the absence of an election by a retiring member of the uniformed services, are automatically provided to the retiree's spouse and reduce the retiree's pay does not constitute a taxable gift. §25.2517–1. (Sec. 2517, '54 Code.)

Rev. Rul. 75–508, 1975–2 C.B. 379.

202.11 Employees'; community property; interest in profit-sharing plan. At the time of her husband's death a nonemployee surviving spouse in a community property state is subject to the gift tax by reason of the death benefit transferred to a designated beneficiary pursuant to her husband's qualified profit-sharing retirement plan and the exclusion provided by section 2517(a) is not applicable. §25.2517–1. (Sec. 2517, '54 Code.)

Rev. Rul. 75–240, 1975–1 C.B. 315.

202.12 Employees'; relinquishment of trust rights. The relinquishment of an employee's right to the amount of the employer's contributions credited under an employees' nonexempt contributory pension or profit sharing plan and trust will not result in income tax liability to the employee or to the trust. However, this constitutes a gift to the remaining participants under the plan for which no exclusion is allowable since the trustees have broad discretion in the allocation of amounts in the trust and the value of the gift to any one donee is not susceptible of determination. (Sec. 2503, '54 Code.)

Rev. Rul. 58-307, 1958-1 C.B. 206.

202.13 Purchase from exempt organization. Taxpayer paid *x* dollars to a charitable organization for an annuty to be paid him, his wife, and the survivor. *Held,* taxpayer made a gift to his wife of that portion of the *x* dollars paid for the annuity which is allocable to his wife.§86.2. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 55-388, 1955-1 C.B. 233.

202.14 Retained interest in depletable trust; valuation. The present value of a life annuity payable from the assets transferred by the annuitant to an irrevocable trust, that terminates upon his death with the property remaining payable to his heirs is based on annuity factors contained in section 25.2512-9(e) of the regulations, which take into account the annual payment until the death of the annuitant or until the fund is exhausted, whichever occurs first, and the gift in trust is the amount transferred to the trust less the value of the retained interest so computed.§§25.2512-8, 25.2512-9. (Sec. 2512, '54 Code.)

Rev. Rul. 77-454, 1977-2 C.B. 351.

202.15 Self-employment plan. No portion of an annuity attributable to contributions made on behalf of a self-employed individual may be excluded from gross estate under section 2039(c) or from the total amount of gifts under section 2517 of the Code.§§20.2039-2, 25.2517-1. (Secs. 2039, 2517; '54 Code.)

Rev. Rul. 74-119, 1974-1 C.B. 276.

202.16 Teacher's beneficiary. The exclusions provided by sections 2039 and 2517 of the Code do not apply to amounts received by the beneficiary of a public school teacher pursuant to an annuity contract purchased under section 403(b) by a school that is an integral part of a state or local government.§§20.2039-2, 25.2517-1. (Secs. 2039, 2517; '54 Code.)

Rev. Rul. 68-294, 1968-1 C.B. 46.

Appeals
(See: ADMINISTRATIVE)

Assessments
(See: ADMINISTRATIVE)

Attorneys and agents
(See: ADMINISTRATIVE)

Bankruptcy and receiverships
(See: ADMINISTRATIVE)

Bonds
(See: Securities; ADMINISTRATIVE)

Books and records
(See: ADMINISTRATIVE)

Charitable, etc., transfers

204.1 Annuity purchased from charitable organization. A taxpayer purchased from a charitable organization an annuity that is payable for the taxpayer's life from the general funds of the charity. A gift tax charitable deduction is allowable for the amount paid to the charity that exceeds the present value of the annuity. §25.2522(a)-1. (Sec. 2522, '54 Code).

Rev. Rul. 80-281, 1980-2 C.B. 282.

204.2 Charitable remainder annuity trust; transfer. The transfer by the grantor/life-interest beneficiary and the successive life-interest beneficiary of their annuity interests in a charitable remainder annuity trust to the charitable beneficiary qualifies for the charitable deductions under sections 170 and 2522. §25.2522(c)-3. (Sec. 170, 664. 2522; '54 Code.)

Rev. Rul. 86-60, 1986-17 I.R.B. 9.

204.3 Communal religious organization. Contributions, made to or for the use of an exempt communal religious organization, are not deductible if such organization is engaged in the operation of a commercial enterprise the proceeds of which inure to the common benefit of its members. (Sec. 2522, '54 Code.)

Rev. Rul. 57-574, 1957-2 C.B. 161.

204.4 Community recreational organization; use of facilities restricted. A nonprofit corporation which was organized to provide community recreational facilities without charge to the residents of a township, but which restricts their use to less than the entire community on the basis of race is not organized and operated exclusively for charitable purposes. Contributions and transfers to or for the use of such an organization are not deductible under sections 170, 2055, 2106, or 2522. Such an organization is not exempt from federal income tax as an organization described in section 501(c)(3).§§20.2055-1, 20.2106-1, 25.2522(a)-1. (Secs. 170, 501, 2055, 2106, 2522; '54 Code.)

Rev. Rul. 67-325, 1967-2 C.B. 113.

204.5 Condition subsequent based on Federal tax liability. Where a trust agreement makes a present gift to charity of a future interest in property and contains a provision calling for the revocation of any of the broad discretionary powers given to the trustees if, by reason thereof, Federal tax liability is incurred, such provision is a condition subsequent which is contrary to public policy and therefore void. Accordingly, no deduction will be allowed for the present worth of the charitable remainder interest. Distinguished by Rev. Ruls. 75-440 and 76-199.§25.2522(a)-2. (Secs. 170, 2522; '54 Code.)

Rev. Rul. 65-144, 1965-1 C.B. 442.

204.6 Contributions to State activity; promotion of the United Nations. Bequests, legacies, devises, transfers or gifts to or for the use of a committee created by executive order of the governor of a state as an official agency thereof to commemorate "United Nations Day" and to conduct a continuing program through the state university and state public school system for the education of the public, with respect to the purposes and the activities of the United Nations, are deductible, if made for exclusively public purposes.§25.2522(a)-1. (Sec. 2522, '54 Code.)

Rev. Rul. 62-66, 1962-1 C.B. 83.

204.7 Easement; open space; valuation. A gratuitous contribution of an open space or scenic easement in perpetuity without expectation of economic benefit to the donor is a charitable contribution deductible under sections 170 and 2522 of the Code and, if not separately and distinctly valued, the value of the gift may be determinable according to the "before and after" approach. Clarified by Rev. Rul. 76-376. (Sec. 2522, '54 Code.)

Rev. Rul. 73-339, 1973-2 C.B. 68.

204.8 Guaranteed annuity. Annuity interests that will continue for a term of years or for a period of lives in being plus a term of years can qualify as guaranteed annuity interests under section 2522(c)(2)(B). §§25.2512-5, 25.2522(c)-3. (Secs. 2512, 2522; '54 Code.)

Rev. Rul. 85-49, 1985-1 C.B. 330.

204.9 Guaranteed annuity; percentage to charity. The transfer in trust of a charitable interest expressed in terms of a fixed percentage of a specified guaranteed annuity which meets the requirements of section 25.2522 (c)-3(c)(2)(v) of the regulations, qualifies as a guaranteed annuity and is deductible under section 2522. §25.2522(c)-3. (Sec. 2522, '54 Code.)

Rev. Rul. 77-327, 1977-2 C.B. 353.

204.10 Income interest; deductibility. The charitable interest provided for in a trust instrument, in the form of a payment to charity of the lesser of the trust income for the taxable year or a fixed percentage of the net fair market value of the trust assets, is not a unitrust interest and no deduction for the value of the charitable interest is allowable.§25.2522(c)-3. (Sec. 2522, '54 Code.)

Rev. Rul. 77-300, 1977-2 C.B. 352.

204.11 Income interest; grantor's power to designate beneficiary. Creation of a trust that provides for reversion of principle to the grantor the grantor's estate after ten years and one month and for distribution of the annual net income to beneficiaries described in sections 170(c) and 2522 in accordance with the grantor's designation made prior to the beginning of the year or, upon the grantor's failure to so designate, in accordance with the trustee's selection at the end of the year, does not constitute a completed gift. The exercise or lapse of the grantor's power to designate the beneficiary will result in a completed gift; however, no deduction is allowable by virtue of seciton 2522(c)(2).§§25.2511-2, 25.2522(c)-3. (Secs. 2511, 2522; '54 Code.)

Rev. Rul. 77-275, 1977-2 C.B. 346.

204.12 Income interest; participation plan. The method of reporting contributions of money and property made to an income participation fund of an exempt organization where payments from the net income of the fund are to be made to the contributors or to the contributors and their designated coparticipants during their lives.§§81.17, 81.44. (Secs. 811(c), 812(d), '39 Code; Secs. 2035, 2055, '54 Code.)

Rev. Rul. 55-275, 1955-1 C.B. 295.

204.13 Income interest; valuation. The value of an income interest may be computed by use of the actuarial tables prescribed in section 20.2031-7 of the Estate Tax Regulations provided the entire amount (or a specific fraction) of the income from the transferred property is receivable by the income beneficiary. Where a bequest provides that the annual income only up to three and one half percent of the value of the subject property is payable to charity, the tables are not applicable in valuation of the charitable interest, and a deduction is not allowable under section 2055 of the Code. Similarly, the gift tax chaitable deduction is not allowable with respect to comparable inter vivos gifts.§§20.2031-7, 20.2055-2, 25.2512-5, 25.2522(a)-2. (Secs. 2031, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 67-195, 1967-1 C.B. 267.

204.14 Interests in property; cash value of insurance. The irrevocable assignment of the cash surrender value of a life insurance policy to a college by a donor who retains the right to designate the beneficiary and to assign the balance of the policy, whether the policy is paid-up and the college is given possession or the policy is nonpaid-up and the donor retains possession, is a gift of neither the donor's entire interest in the policy nor an undivided portion of that interest, and no gift tax charitable deduction is allowed. §25.2522(c)-3. (Sec. 2522, '54 Code.)

Rev. Rul. 76-200, 1976-1 C.B. 308.

204.15 Interests in property; undivided portion. Application of section 2522(c) of the Code to deductions for gifts made after July 1969 and before October 4, 1972 where the interest transferred is an undivided portion of a donor's entire interest in property.§25.2522(c)-3. (Sec. 601.105, S.P.R.; Sec. 2522, '54 Code.)

Rev. Proc. 72-45, 1972-2 C.B. 826.

204.16 Pacific War Memorial Commission. Contributions, gifts, legacies, bequests, devises, or transfers to the Pacific War Memorial Commission, an agency of the Territory of Hawaii, are deductible for estate and gift tax purposes in the manner and to the extent provided by the 1939 Code.§§81.44, 86.13. (Secs. 812(d), 1004, '39 Code; Secs. 2055, 2522, '54 Code.)

Rev. Rul. 54-220, 1954-1 C.B. 65.

204.17 Perpetual care of nonprofit cemetery. A bequest or devise to a trustee or trustees for the perpetual care of a nonprofit cemetery, owned by a corporation other than a religious organization, will not qualify for the estate tax charitable deduction. Similarly, an inter vivos gift for the same purpose will not qualify for the gift tax charitable deduction.§§20.2055-1, 25.2522(a)-1. (Secs. 2055, 2522; '54 Code.)

Rev. Rul. 67-170, 1967-1 C.B. 272.

204.18 Pledge of donor honored by third party. An individual made a binding pledge to a charitable organization that was honored by a third party. The individual is considered to have made a gift to the charity at the time the pledge became enforceable, and the third party made a gift to the individual at the time the pledge was honored. The individual is entitled to a charitable gift deduction, but the third party is not. §§25.2511-2, 25.2522(a)-1 (Secs. 2511, 2522; '54 Code.)

Rev. Rul. 81-110, 1981-1 C.B. 479.

204.19 Political party. Contributions made to a political party or to a candidate for public office are not allowable as deductible contributions.§§ 25.2513-1, 25.2521-1, 25.2522(a)-1, 25.6019-1. (Secs. 2513, 2521, 2522, 6019; '54 Code.)

Rev. Rul. 59-57, 1959-1 C.B. 626.

204.20 Qualification of recipient; political activities. Taxpayer funded a foundation, the purpose of which was to investigate social welfare and relief needs at the local level in the state of its organization. The primary recipient of the foundation was another social welfare organization engaged in such activities; however, it also had a legislative committee which took an active interest in legislation having to do with social service problems in the state. *Held*, the activities of the legislative committee were incidental to the charitable activities of the recipient; accordingly, taxpayer's contributions to the foundation qualified for the chartiable deduction. (Sec. 1004, '39 Code; Sec. 2522, '54 Code.)

Martha Hubbard Davis, 22 T.C. 1091, Acq., 1954-2 C.B. 4.

204.21 Remainder interest; personal residence; valuation. A charitable remainder interest in a personal residence donated to a church in 1976, subject to a 20-year term for a noncharitable tenant, is valued for gift tax purposes without taking into consideration the elements of depreciation for the period during which the property will be in the noncharitable tenant's possession. The value of the charitable remainder interest is higher for gift tax purposes than for income tax purposes. §25.2522(c)-3. (Sec. 2522, '54 Code.)

Rev. Rul. 76-473, 1976-2 C.B. 306.

204.22 State Bar. Unrestricted contributions made to or for the use of an integrated State Bar that is not a political subdivision of a state and has private as well as public purposes are not deductible under section 2055 or section 2522. Rev. Rul. 59-152 revoked. Amplified by Rev. Rul. 78-129.§§20.2055-1, 25.2522(a)-1, 301.7805-1. (Secs. 170, 2055, 2522, 7805; '54 Code.)

Rev. Rul. 77-232, 1977-2 C.B. 71.

204.23 State Bar. The satisfaction on or after July 5, 1977 of a legally enforceable obligation resulting from a pledge made prior to that date to an integrated State Bar may qualify as a deductible charitable transfer. Rev. Rul. 77-232 amplified.§§20.2053-5, 20.2055-1, 25.2522(a)-1, 301.7805-1. (Secs. 170, 2053, 2055, 2522, 7805; '54 Code.)

Rev. Rul. 78-129, 1978-1 C.B. 67.

204.24 Trust; deduction. A trust does not qualify as a charitable remainder trust and no deduction is allowable under sections 170 and 2522 if it is possible that federal estate and state death taxes may be payable from the trust assets. However, a trust will qualify as a charitable remainder trust and a deduction is allowable under sections 170 and 2522 if a secondary life beneficiary furnishes the funds for the payment of any death taxes for which the trust may be liable. §§20.2036-1, 25.2522(c)-3, 301.7805-1. (Secs. 170, 664, 2036, 2522, 7805; '54 Code.)

Rev. Rul. 82-128, 1982-2 C.B. 71.

204.25 Trust; trustee's power to borrow from trust. A settler's transfer of money to a charitable trust that is a private foundation does not qualify for a gift tax charitable deduction if the trustee, an adult child of the settlor, may borrow money from the trust. §§25.2511-1, 25.2522(c)-2. (Secs. 2511, 2522; '54 Code.)

Rev. Rul. 80-271, 1980-2 C.B. 282.

204.26 Trust remainder; amendments of governing instrument. The governing instrument of a charitable remainder trust, not a charitable remainder annuity trust, a charitable unitrust, or a pooled income fund, may not be amended under section 2055(e)(3) so as to be treated as such a trust, unitrust, or fund from the date the trust was initially created for purposes of the gift tax charitable deduction.§§20.2055-2, 25.2522(c)- 3. (Secs. 2055, 2522; '54 Code.)

Rev. Rul. 77-132, 1977-1 C.B. 297.

204.27 Trust remainder; based on contingency. Where the remainder interest which charity may receive under the terms of an irrevocable intervivos trust is based upon the contingency that the life tenants, aged 40 and 50 years, respectively, on the date of gift, die without being survived by issue, no deduction may be allowed in respect of the charitable interest under section 2522 of the 1954 Code.§86.13. (Sec. 1004, '39 Code; Sec. 2522, '54 Code.)

Rev. Rul. 55-483, 1955-2 C.B. 391.

204.28 Trust remainder; capital gain distributions. Where an irrevocable trust provides that capital gain dividends received from stock in regulated investment companies shall be treated as corpus and held for the charitable remainderman rather than distributed to the noncharitable life tenant, the present worth of the remainder interest is deductible and may be valued by the use of the appropriate actuarial remainder table. However, where such capital gain dividends are treated as income and paid to the life tenant, the charitable interest is not severable since no formula is available for ascertaining its value and no charitable deduction is allowable. Rev. Rul. 55-620 revoked. Supplemented by Rev. Rul. 67-33.§25.2522(a)-2. (Sec. 2522, '54 Code.)

Rev. Rul. 60-385, 1960-2 C.B. 77.

204.29 Trust remainder; capital gain distributions. Where local law authorizes a trustee to invest corpus in the stock of regulated investment companies and to pay out capital gain distributions received therefrom as income under the general provisions of the governing instrument, a charitable deduction is not allowable with respect to a charitable remainder interest as the charitable interest is not severable from the noncharitable interest. This ruling will not be applied with respect to transfers completed prior to May 1, 1967, or, under certain circumstances, to transfers made under instruments executed prior to that date. Rev. Rul. 60-385 supplemented.§§20.2055-2, 25.2522(a)-2, 301.7805-1. (Secs. 170, 2055, 2522, 7805; '54 Code.)

Rev. Rul. 67-33, 1967-1 C.B. 62.

204.30 Trust remainder; divorce settlement. A trust was set up under a divorce settlement to terminate upon the death or remarriage of the wife, with remainder over to a charitable foundation. The transfer of the remainder of such trust to a charitable foundation is a gift, but the amount is deductible by the donor in computing taxable gifts for the taxable year in which the transfer is made. (Sec. 2522, '54 Code.)

Rev. Rul. 57-506, 1957-2 C.B. 65.

204.31 Trust remainder; establishment of charitable fund. A donor transferred property to an irrevocable trust upon the conditions (1) that the income be paid to the donor for life, and (2) that upon the donor's death the remainder interest in the trust be used by the trustees for the establishment and maintenance of a charitable fund *Held*, the present worth of the remainder interest as of the time of the gift is deductible under section 2522 of the Code. E.T. 15 superseded.§§25.2512-5, 25.2522(a)-1. (Secs. 2512, 2522; '54 Code.)

Rev. Rul. 68-155, 1968-1 C.B. 411.

204.32 Trust remainder; pooled income fund. An otherwise qualifying fund whose governing instrument permits the duration of a beneficiary's income interest to be measured by the life of another does not qualify as a pooled income fund under section 642(c)(5), and the value of a remainder interest in property transferred to the fund is not deductible under section 170, 2055, 2106, or 2522, even though the instrument of transfer bases the duration of the designated beneficiary's income interest on the beneficiary's life. The fund's governing instrument may be amended to qualify prospectively if the fund has not accepted property under a defective instrument of transfer. §§20.2055-2, 20.2106-1, 25.2522(c)-3. (Secs. 170, 642, 2055, 2106, 2522; '54 Code.)

Rev. Rul. 79-61, 1979-1 C.B. 220.

204.33 Trust remainder; probability of charitable transfer. A charitable remainder interest in an irrevocable trust subject to invasion to make fixed payments to the life tenant is not deductible where the probability that the transfer will not occur is greater than five percent.§25.2522(a)-2. (Sec. 2522 '54 Code.)

Rev. Rul. 70-452, 1970-2 C.B. 199.

204.34 Trust remainder; remaindermen added or substituted. The deduction for a remainder interest transferred in trust to an organization described in sections 170(c), 2055(a), and 2522(a) is not disallowed under section 2522(c)(2) where the trustee has the power, exercisable during the donor's life, to add and/or substitute additional organizations described in section 170(b)(1)(A) as remaindermen. §25.2522(c)-3. (Sec. 2522, '54 Code.)

Rev. Rul. 76-371, 1976-2 C.B. 305.

204.35 Trust remainder; tenancy by the entirety property. An illustration is given of the Federal gift tax consequences of the transfer of tenancy by the entirety property, purchased with the separate funds of a spouse who did not elect to report the creation of the tenancy as a gift, to a charitable remainder annuity trust in which the transferors retained joint and survivor life estates. §25.2515–3. (Sec. 2515, '54 Code.)

Rev. Rul. 76–157, 1976–1 C.B. 306.

204.36 Trust remainder; transfer of undivided portion A transfer to a charitable organization of one-half of a donor's remainder interest in a trust created by another, which is the donor's only interest in the trust property, is the transfer of an undivided portion of the donor's entire interest in the trust. A charitable deduction is allowable under section 2522. §25.2522(c)–3. (Sec. 2522, '54 Code.)

Rev. Rul. 79–295, 1979–2 C.B. 349.

204.37 Trust remainder; unitrust. The transfer of property to a charitable remainder unitrust, the trustee and remainder beneficiary of which was an organization described in sections 170(c) and 2522 at the time of the transfer, will qualify for the gift tax deduction even though the governing instrument of the trust limits ultimate distribution to organizations described in section 170(c) and there exists the remote possibility the charitable remainderman would not qualify under sections 170(c) and 2522 upon termination of the trust. A charitable deduction to the donor's estate will depend on qualification of the charitable remainderman under section 2055 at the date of the donor's death. §§20.2055–2, 20.2106–1, 25.2522(a)–1. (Secs. 170, 664, 2055, 2106, 2522; '54 Code.)

Rev. Rul. 76–307, 1976–2 C.B. 56.

204.38 Trust remainder; valuation. Taxpayer made gifts of company stock to irrevocable trusts under which the income is to be paid to life beneficiaries and the principal to a charitable organization upon the death of the life beneficiaries. The trust instruments empowered the trustees to allocate to income stock dividends with a fair market value not exceeding five percent of the fair market value of the class of stock on which the dividends were declared. *Held,* the provision in the instruments relating to the five percent stock dividends does not create sufficient uncertainity as to the value of the charitable remainder or create such a possibility of diversion of the remainder interest as to require that the fair market value at the date of transfer of stock to the trusts be reduced by the per share amount of the corporation's accumulated earnings before applying the actuarial tables in computing the deduction for the gift to charity. (Sec. 2522, '54 Code.)

William T. Grant, 48 T.C. 606, Acq., 1973–1 C.B. 1.

204.39 Unitrust interest; qualification. The failure to designate the specific charitable recipients of a charitable lead unitrust interst under a 10–year and 1–month trust will not disqualify the interest for the charitable deduction where the trustee is empowered to select the beneficiaries and the governing instrument requires that only charitable organizations that meet the requirements of section 2522(a) can be selected.§25.2522(c)–3. (Sec. 2522, '54 Code.)

Rev. Rul. 78–101, 1978–1 C.B. 301.

204.40 Unitrust interest; valuation. An example illustrates that the allowable annual charitable deduction for a unitrust interest passing to a qualified charity under a 10–year and 1–month trust will be less if the trust provides for payment to the charity of the greater of 2 percent of the net fair market value of trust property of the trust income than if the trust provided for payment limited to a 2 percent unitrust amount with any excess income accumulated. Rev. Rul. 77–223 superseded.§25.2522(c)–3. (Sec. 2522, '54 Code.)

Rev. Rul. 78–183, 1978–1 C.B. 302.

204.41 Unitrust remainder interest; donee's power; beneficial interest; presently ascertainable. A donor transferred shares of stock in a publicly held corporation to a qualified, pre-existing charitable remainder unitrust. The donor was both a director of the corporation and one of two cotrustees of the trust. The trust corpus consisted solely of that corporation's stock, which was subject to a right of "first refusal." The trustees, using independent judgement, consistently adopted the same price as the fair market value of the trust's stock. Because the donor is bound by a fidiciary duty as both a director and cotrustee, the donor's power to determine the stock's value is limited. Therefore, the value of the charitable beneficial interest is presently ascertainable, and the charitable deduction is allowable with respect to the remainder interest.§25.2522(c)–3. (Sec. 2522, '54 Code.)

Rev. Rul. 80–83, 1980–1 C.B. 210.

204.42 Universities; fraternity houses. All bequests, devises, legacies, and transfers to a college for the purpose of acquiring or constructing a housing facility for use by a designated fraternity, under certain terms and conditions, will be deductible from the amount of gross gifts made by donors during a calendar year.§25.2522(a)–1. (Sec. 2522, '54 Code.)

Rev. Rul. 60–367, 1960–2 C.B. 73.

204.43 Valuation; imminent death of transferee. The actuarial tables set forth in the regulations may be disregarded in valuing annuities, life estates, terms for years, remainders, and reversions for estate and gift tax purposes only if the individual is known to have been afflicted, at the time of transfer, with an incurable physical condition that is in such an advanced stage that death is clearly imminent. Rev. Rul. 66–307 clarified. §§20.2013–4, 20.2031–10, 20.2037–1, 20.2042–1, 20.2055–2, 25.2512–9, 25.2522(c)–3. (Secs. 2013, 2031, 2037, 2042, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 80–80, 1980–1 C.B. 194.

Claims

(See: ADMINISTRATIVE: Limitation period; Refunds and credits)

Closing agreements

(See: ADMINISTRATIVE)

Collection of tax

(See: ADMINISTRATIVE)

Community property

206.1 Annuities; interest in profit-sharing plan. At the time of her husband's death a nonemployee surviving spouse in a community property state is subject to the gift tax by reason of the death benefit transferred to a designated beneficiary pursuant to her husband's qualified profit-sharing retirement plan and the exclusion provided by section 2517(a) is not applicable. §25.2517–1. (Sec. 2517, '54 Code.)

Rev. Rul. 75–240, 1975–1 C.B. 315.

206.2 Division; lifetime exemption. A donor has not lost his specific lifetime exemption where he had used it in reporting a division of community property when the regulations considered such a division a taxable gift but which provision was subsequently eliminated from the regulations; it is still available to him.§86.12. (Sec. 1004, '39 Code; Sec. 2522, '54 Code.)

Rev. Rul. 55–709, 1955–2 C.B. 609.

206.3 Life insurance; beneficiary other than estate; Louisiana. Treatment of insurance on decedent's life for Federal estate and gift tax purposes under the community property laws of Louisiana where the insured had retained incidents of ownership in the policies and part or all of the premiums were paid from community funds.§§81.26, 81.27, 81.36, 81.47(a), 86.2. (Secs. 811, 812, 1000, '39 Code; Secs. 2042, 2051, 2511, '54 Code.)

Rev. Rul. 232, 1953–2 C.B. 268.

206.4 Life insurance; beneficiary other than estate; Louisiana or Texas In Louisiana or Texas a married man who purchases life insurance in favor of a beneficiary other than his estate possesses incidents of ownership in the policy, one-half in his own right and one-half as agent of his wife. Upon death one-half of the proceeds of the policy is includible in his gross estate and the remaining one-half becomes an absolute gift by the wife. If the wife predeceases the husband, one-half value of the policy is includible in her gross estate as her interest in a community asset or as a revocable transfer. Modified by Rev. Rul. 75–100 to remove the implication that one-half the "cash surrender value" is the includible "value of the policy" at the date of the death of the uninsured spouse.§§81.20, 81.27, 86.2. (Secs. 811(g), 1000, '39 Code; Secs. 2042, 2511, '54 Code.)

Rev. Rul. 48, 1953–1 C.B. 392.

206.5 Life insurance; proceeds transferred in trust. Insurance policies on the life of the deceased husband were made payable to the executor of his estate as trustee. Community property funds were used to pay the premiums. *Held,* under the law of Texas, the surviving wife did not have a community property interest in the proceeds of the policies upon the death of her husband, even though during his life she had a vested interest in one-half of the value of the policies. Consequently, she could not make a taxable gift of such proceeds by consenting to the insurance trust upon the husband's death (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Chase National Bank of the City of New York, 25 T.C. 617, Nonacq., 1957–2 C.B. 8.

206.6 New Mexico; re-registration of stock in wife's name. The re-registration by a husband of one-half the shares of stock held as New Mexico community property into his wife's name to be held as her separate property is a gift by the husband of his survivorship interest in such stock. Modified by Rev. Rul. 75–551.§25.2511–2 (Sec. 2511, '54 Code.)

Rev. Rul. 70–401, 1970–2 C.B. 197.

206.7 New Mexico; re-registration of stock in wife's name. After June 1973, the re-registration by a husband of one-half the shares of stock held as New Mexico community property into his wife's name to be held as her separate property is not considered to be a gift. Rev. Rul. 70–401 modified. §25.2511–2. (Secs. 1002, 2511; '54 Code.)

Rev. Rul. 75–551, 1975–2 C.B. 378.

206.8 Texas; remainder interest; joint will. Taxpayer and his wife executed a joint will containing reciprocal provisions. The instrument, probated as the wife's separate will at her death, conveyed a life estate in her share of the community property to taxpayer and the remainder to their sons. *Held,* taxpayer had not made a gift of his remainder interest in the community property by virtue of an election to accept the benefits (the life estate) under the wife's will; the governing document should be viewed as the separate will of each spouse and taxpayer had not made a transfer of the remainder interest by virtue of entering into a contract binding taxpayer at his wife's death; and even if there were a contract, the agreement was only that the surviving spouse would leave to the children all of the property owned by the survivor. (Secs. 2501, 2511; '54 Code.)

S. E. Brown, 52 T.C. 50, Acq. in result, 1969–2 C.B. xxiv.

206.9 Transfer in trust; valuation. Taxpayer's husband bequeathed in trust all of his residuary estate. Under the terms of the will, the taxpayer elected to have her one-half interest in the community property included in the trust, thereby receiving a life estate in the entire corpus. *Held,* the value of the taxpayer's gift is to be measured by subtracting from the value of her one-half interest in the community property the value of her life estate in the entire community property. (Sec. 1002, '39 Code; Sec. 2512, '54 Code.)

Zillah Mae Turman, 35 T.C. 1123, Acq., 1964–2 C.B. 7; Mildred Irene Siegel, 26 T.C. 743, Nonacq. withdrawn and Acq. substituted, 1964–2 C.B. 7.

206.10 Transfer of interest to spouse; Louisiana. The transfer to the spouse of an amount equal to one-half of the net income received from real property purchased in Louisiana by a person who took title thereto in his own name will not constitute a gift unless it was stipulated that the property was purchased with his separate funds and for his separate use. The spouse is presumed to have acquired a one-half community interest in the property at the date of purchase.§86.1. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 55–461, 1955–2 C.B. 608.

206.11 Transfer to testamentary trust; effective date. The effective date of a gift, under an agreement that was properly executed in compliance with section 26.16.120 of the Revised Code of the State of Washington, whereby a wife agrees to transfer her community interest in her husband's estate to a testamentary trust for her benefit when his estate is settled, is the date of the husband's death.§25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 69–346, 1969–1 C.B. 227.

206.12 Transfer to testamentary trust; surviving spouse's interest; joint and contractual will. Taxpayer entered into a joint and contractual will with her husband whereby the community property of the first to die was to be placed in a testamentary trust. When her husband died, she placed her share of the community into a separate trust as agreed. From the trust she was entitled to income for life and corpus as needed or approved by her children the ultimate recipients of the property. The remainder was to pass to the testamentary trust at her death. *Held,* she did not part with either legal title to or economic benefits of a remainder interest in her share of the community property and did not make a taxable gift. (Secs. 2501, 2511; '54 Code.)

Sallie B. Hambleton, 60 T.C. 558, Acq. in result, 1974–1 C.B. 1.

206.13 Transferred from separate; Washington State. The written agreement by a husband and wife, residing in Washington State, providing that all real and personal property presently owned or subsequently acquired will be community property results in a single gift of the value of the property interests transferred and additional gifts will occur with respect to separate acquisitions in future years that are converted to community property pursuant to the agreement. G.C.M. 19248 superseded.§25.2511–1. (Secs. 61, 2511; '54 Code.)

Rev. Rul. 77–359, 1977–2 C.B. 24.

Compromises

(See: ADMINISTRATIVE: Offers in compromise)

Computation of tax

(See: ADMINISTRATIVE)

Conferences

(See: ADMINISTRATIVE: Appeals)

Court decisions

(See specific subject headings)

Credits against tax

(See also: ADMINISTRATIVE: Refunds and credits)

208.1 Australian convention; transfer of securities. Where a donor, a citizen and resident of the U.S. made a gift of securities which are deemed to be situated in Australia, under Article III (1)(d) of the U.S.—Australia gift tax convention, and the Commonwealth gift duty imposed by Australia with respect to the gift exceeds the Federal gift tax imposed by the U.S., under paragraph (1) of Article V of the convention a credit against the Federal gift tax is allowable for the full amount of the Federal gift tax imposed.

Rev. Rul. 66–119, 1966–1 C.B. 359.

208.2 Unified credit; adjustment to value of gift. A donor's use of the unified credit does not result in the payment or assessment of the gift tax which would preclude the subsequent adjustment to the value of the gift. §§25.2501–1, 25.2504–2. (Secs. 2501, 2504, 2505; '54 Code.)

Rev. Rul. 84–11, 1984–1 C.B. 201.

208.3 Unified credit; election. The unified credit is mandatory, and a donor must use it in computing the net gift tax. (Sec. 2505, '54 Code.)

Rev. Rul. 79–398, 1979–2 C.B. 338.

208.4 Unified credit; tax paid by donee. The gift tax liability assumed by the donee may be deducted from the value of transferred property if payment of tax by donee is a condition of the transfer. The donor's available unified credit is used to reduce the tax in determining the liability. §§25.2511–2, 25.2512–8. (Secs. 2505, 2511, 2512; '54 Code.)

Rev. Rul. 81–223, 1981–2 C.B. 189.

208.5 Unified credit; transitional rules. Examples illustrate that the unified credit provided by section 2505 is computed by reducing the gift tax generated by a transfer by the amount of the unified credit allowable at the time of the transfer. (Sec. 2505, '54 Code.)

Rev. Rul. 79–160, 1979–1 C.B. 313.

Criminal prosecutions

(See: ADMINISTRATIVE)

Deductions

(See also specific subject headings)

210.1 Charitable remainder trust. A trust does not qualify as a charitable remainder trust and no deduction is allowable under sections 170 and 2522 if it is possible that federal estate and state death taxes may be payable from the trust assets. However, a trust will qualify as a charitable remainder trust and a deduction is allowable under sections 170 and 2522 if a secondary life beneficiary furnishes the funds for the payment of any death taxes for which the trust may be liable. §§20.2036–1, 25.2522(c)–3, 301.7805–1. (Secs. 170, 664, 2036, 2522, 7805; '54 Code.)

Rev. Rul. 82–128, 1982–2 C.B. 71.

210.2 Charitable remainder trust; amendment of governing instruments. The governing instrument of a charitable remainder trust, not a charitable remainder annuity trust, a charitable unitrust, or a pooled income fund, may not be amended under section 2055(e)(3) so as to be treated as such a trust, unitrust, or fund from the date the trust was initially created for purposes of the gift tax charitable deduction.§§20.2055–2, 25.2522(c)– 3. (Secs. 2055, 2522; '54 Code.)

Rev. Rul. 77–132, 1977–1 C.B. 297.

Deficiencies

(See: ADMINISTRATIVE)

Delegation of authority

(See: ADMINISTRATIVE: Administration)

Disclosure of information

(See: ADMINISTRATIVE: Publicity of information)

Divorce settlements

214.1 Transfer of annuity payments; agreement in contemplation of divorce. A retired federal employee, in contemplation of a divorce, entered into a written property settlement agreement providing that, after the divorce, the ex-spouse would receive one-half of the employee's annuity payments under the U.S. Civil Service Retirement System. Within two years thereafter, a divorce court that had no power to alter the agreement incorporated it into a divorce decree. The employee did not make a gift to the ex-spouse, because the transfer is deemed to be made for full and adequate consideration in money or money's worth under section 2516. §§20.2043–1, 25.2512–8, 25.2516–1. (Secs. 2043, 2512, 2516; '54 Code.)

Rev. Rul. 80–82, 1980–1 C.B. 209.

214.2 Transfer of property; trust; provision for discretionary payments. The terms of a divorce property settlement trust require that the trustee pay all the trust income to the wife, and should she become physically or mentally incompetent, pay any income not necessary for her care and maintenance either to her or the adult children, or accumulate the surplus and add it to the trust principal. The amount deemed a transfer for full and adequate consideration is the amount required to be paid in the event of the wife's incompetency, and not the present value of the right to receive the entire income from the trust. §25.2516–1. (Sec. 2516, '54 Code.)

Rev. Rul. 75–73, 1975–1 C.B. 313.

214.3 Transfer of property; trust; support rights surrendered. Factual situations illustrate the gift tax consequences of a taxpayer's transfer of property, pursuant to an agreement in contemplation of divorce and in exchange for the spouse's surrender of support rights, to a trust the income from which is payable for the life of the spouse (1) to the spouse with the remainder payable to the children of the taxpayer and spouse, (2) partially to the spouse and partially to a child of the taxpayer and spouse with the remainder payable to the children of the taxpayer and spouse, or (3) to the spouse with the remainder payable to the taxpayer's sibling.§25.2512–8. (Sec. 2512, '54 Code.)

Rev. Rul. 77–314, 1977–2 C.B. 349.

214.4 Transfer of property; trust; surrender of support and marital rights. A donor created a trust pursuant to a divorce settlement by transferring property equal in value to marital and support rights released by the donor's spouse. The terms of the trust provide for a life annuity to the spouse with the remainder payable to the adult child of the parties. The donor is deemed to have received consideration for the transfer to the spouse under section 2516. If the spouse has not specifically bargained for, and relinquished support rights in exchange for, the child's remainder interest, the donor has made a gift to the child. §§20.2043–1, 25.2512–8, 25.2516–1. (Secs 2043, 2512, 2516; '54 Code.)

Rev. Rul. 79–363, 1979–2 C.B. 345.

214.5 Trust for alimony and property settlement. Stock irrevocably transferred to a trust for the benefit of a wife in settlement of property rights and to provide for alimony payments is not a gift. (Sec. 2516, '54 Code.)

Rev. Rul. 57–506, 1957–2 C.B. 65.

Elections

(See: ADMINISTRATIVE)

Enrollment

(See: ADMINISTRATIVE: Attorneys and agents)

Evasion of tax

(See: ADMINISTRATIVE: Fraud)

Evidence

(See: ADMINISTRATIVE: Criminal prosecution; Suits)

Examination of records and returns

(See: ADMINISTRATIVE: Books and records: Returns)

Exclusions

218.1 Death benefit. An employee entered into an employment contract in which the employer agreed to pay a death benefit of twice the annual salary at the time of death to the employee's surviving spouse, but only if the employee was still employed at the time of death. The death benefit was not funded. The employee made a gift of a present interest in the quarter in which death occurred—the time when the value of the death benefit became ascertainable—and the gift qualifies for the annual exclusion allowable under section 2503(b). §§25.2503–2, 25.2511–1, 25.2512–1. (Secs. 2503, 2511, 2512; '54 Code.)

Rev. Rul. 81–31, 1981–1 C.B. 475.

218.2 Future interest; extension of trust term. The extension of the income interest in a trust, made one year after the creation of a trust that provided an income interest in the adult donee for a 5-year period, is the gift of a future interest for which the annual exclusion is not allowable. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 76–179, 1976–1 C.B. 290.

218.3 Future interest; merged with present interest. The gift of a remainder interest in personal property held in trust to a donee who is an income beneficiary of the trust, in a state whose law provides that such an income interest and remainder interest in the same individual merge and the trust terminates with respect to that interest, is a gift of a present interest that qualifies for the annual exclusion.§25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 78–168, 1978–1 C.B. 298.

218.4 Future interest; premiums on life insurance policy. A company paid life insurance premiums on behalf of an employee who assigned the policy to an irrevocable trust with the requirement that the trustee retain the proceeds and pay income from the proceeds periodically to the trust beneficiaries after the employee's death. Neither the employee nor the trust had a contractual right to require the employer to maintain the policy. The present payment of premiums is a gift by the employee of a future interest and does not qualify for the annual exclusion under section 2503(b). §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 79–47, 1979–1 C.B. 312.

218.5 Future interest; qualifying act by donee. The $3,000 annual exclusion is not allowable for a gift of one-third of the income from property, transfered to a 10-year and 3-month trust, commencing at the earlier of three years from the trust creation or the donee's termination of full-time student enrollment in an institution of higher learning. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 75–415, 1975–2 C.B. 374.

218.6 Future interest; tenancy by the entirety; North Carolina. The interest of a wife in real property conveyed as a gift to her and her husband as tenants by the entirety in North Carolina, where the wife is excluded from any right to the use or income from property during the existence of such tenancy, is not a present interest and does not qualify for the $3,000 annual exclusion. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 75–8, 1975–1 C.B. 648.

218.7 Future interest; trust remainder. The gift of a fractional remainder interest in a trust to a donee who already enjoys a present income interest in the same fractional portion of the trust from a donor who intends that the donee await termination of the trust to enjoy the remainder interest, in a state whose law provides that such a trust will continue where no merger is intended by the donor, is a gift of a future interest that does not qualify for the annual exclusion. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 78–272, 1978–2 C.B. 247.

218.8 Gift to corporation. A transfer of property to a corporation is a gift of a future interest to its stockholders; accordingly, the gift does not qualify for the $3,000 annual exclusion. §§25.2503–3, 25.2523(a)–1. (Secs. 2503, 2523; '54 Code.)

Rev. Rul. 71–443, 1971–2 C.B. 337.

218.9 Gift to political organizations. In general, political organizations will be recognized as separate donees for purposes of the annual gift tax exclusion. Where, however, political organizations have essentially the same officers and supported candidates and no substantial independent purpose, the organizations will be treated as one and gifts to them by an individual will be aggregated. Officers or supported candidates will not be deemed to be essentially the same if at least one-third of the officers or candidates are different in each of the committees. Amplified by Rev. Rul. 74–199 with respect to evidentiary requirements. §25.2503–2. (Sec. 2503, '54 Code.)

Rev. Rul. 72–355, 1972–2 C.B. 532.

218.10 Gift to political organizations; evidentiary requirements. The $3,000 gift tax exclusion is allowable only for a contribution to a bona fide political committee where in fact: (1) the contribution was made by the donor or his agent to the political committee; (2) the named officers of the committee were its officers; (3) the committee had a bank account and/or records evidencing receipt of the contributions; (4) the committee disbursed contributions for campaign purposes; and (5) the committee filed any required Federal and State reports consistent with the foregoing. Rev. Rul. 72–355 amplified.§25.2503–2. (Sec. 2503, '54 Code.)

Rev. Rul. 74–199, 1974–1 C.B. 285.

218.11 Medical expenses paid on behalf of another. The direct payment of unreimbursable medical expenses to the service provider by a donor on behalf of another is not subject to gift tax under section 2503(e), effective for gifts made after December 31, 1981. Rev. Ruls. 54–343 and 73–612 amplified. §§25.2503–1, 25.2512–8. (Secs. 2503, 2512; '54 Code.)

Rev. Rul. 82–98, 1982–1 C.B. 141.

218.12 Present interest; tenancy by the entirety; Tennessee. The interest of a wife in property transferred as a gift to her and her husband as tenants by the entirety in Tennessee qualifies as a present interest for purposes of the annual exclusion under section 2503(b). Rev. Rul. 74–345 revoked. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 79–54, 1979–1 C.B. 313.

218.13 Real property; surface and subsurface rights retained. Where a donor transfers real property and reserves the right to current crops and rents, and also retains a one-half interest in any oil, gas and mineral rights, the transfer of the surface rights represents a gift of a future interest against which the annual exclusion is not allowable. The gift of the one-half interest in the oil, gas and mineral rights constitutes a gift of present interest, provided the donee has access to the subsurface resources. An annual exclusion is allowable with respect to the gift of subterranean rights.§25.2503–2. (Sec. 2503, '54 Code.)

Rev. Rul. 67–172, 1967–1 C.B. 276.

218.14 Real property; transfers; adjustment based on Service's valuation of the property. The value of a gift will be determined without regard to an adjustment clause that provides for the recharacterization of the transaction depending on the Service's valuation of the property. §25.2501–1, 25.2503–3, 25–2511–2. (Secs. 2501, 2503, 2511; '54 Code.)

Rev. Rul. 86–41, 1986–12 I.R.B. 9.

218.15 Real property; transfers; completed gifts. Transfers by a donor of specified portions of real property equal in value to the annual gift tax exclusion allowable for the years of the transfer constitute completed gifts each year of the portions transferred, and each gift qualifies for the annual exclusion under section 2503. §§25.2501–1, 25.2503–3, 25.2511–2. (Secs. 2501, 2503, 2511; '54 Code.)

Rev. Rul. 83–180, 1983–2 C.B. 169.

218.16 Stock transferred in trust at donee's request. Numerous gifts of stock were made in 1960 to various donees in accordance with an instrument designated "Agreement of Trust." The shares were registered in the names of the donees, subject only to a restriction against transfer for a 10-year period coupled with delivery of the certificates to a bank. Additional gifts were made in 1961 to certain donees who requested that these gifts be treated the same as their previous gifts. *Held,* since the later gifts were placed in trust at the request of the donees and not as a condition of the gifts, they were gifts of a present interest against which the donors were entitled to the annual exclusion. (Sec. 2503, '54 Code.)

Laura M. Hutchinson, 47 T.C. 680, Nonacq., 1967–2 C.B. 4.

218.17 Trust; discretion to distribute principal. The gift tax exclusion does not apply to a gift in trust where the instrument provides for the distribution of income to a designated beneficiary but gives the trustee the uncontrolled discretion to determine whether or not to distribute principal.§86.10. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 54–92, 1954–1 C.B. 207.

218.18 Trust; income interest; value not ascertainable. The value of an income interest in a trust, whose governing instrument provides that all gains and losses from the sale of trust assets are to be credited or charged to income, is not an ascertainable present interest in property and does not qualify for the annual exclusion.§25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 77–358, 1977–2 C.B. 342.

218.19 Trust; power to demand corpus; present v. future interest. A trust provision that gives a legally competent adult beneficiary the power to demand corpus does not qualify a transfer to the trust as a present interest eligible for the gift tax annual exclusion, if due to the donor's conduct, the beneficiary lacks knowledge of the power and does not have a reasonable opportunity to exercise it before it lapses. Distinguished by Rev. Rul. 83–107. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 81–7, 1981–1 C.B. 474.

218.20 Trust; power to demand corpus; present v. future interest. The grant, to a trust beneficiary, of a power to withdraw from trust corpus is a present interest eligible for the annual exclusion under section 2305(b) in the year of the transfer to the trust, even though the beneficiary was not informed of the existence of the power until the following calendar year. Rev. Rul. 81–7 distinguished. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 83–108, 1983–2 C.B. 167.

218.21 Trust; present v. future interest; share in corpus. A gift of a right to demand and receive at least a pro rata portion of trust corpus conveyed to several donees is a gift of a present interest to the extent of each donee's pro rata portion, and the annual exclusion under section 2503 is allowable. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul 80–261, 1980–2 C.B. 279.

218.22 Trust; reciprocal powers to withdraw corpus. No gift tax exclusions are allowable for creation of reciprocal powers to withdraw corpus from a trust where two or more grantors, acting mutually, each creates a trust for the primary benefit of a child and gives each of the other grantors a corresponding power to withdraw a specified amount from the trust. §§25.2503–3, 25.2511–2, 25.2514–1. (Secs. 2503, 2511, 2514; '54 Code.)

Rev. Rul. 85–24, 1985–1 C.B. 329.

218.23 Trust for minor; guardian not appointed. A gift in trust for the benefit of a minor beneficiary without appointment of a legal guardian, with use of the principal and income for the benefit of the minor discretionary with the trustee, is a gift of a present interest that qualifies for the annual exclusion provided there is no impediment under the trust or local law to the appointment of a guardian and the minor has a right to demand distribution. Rev. Rul. 54–91 revoked.§25.2503–2. (Sec. 2503, '54 Code.)

Rev. Rul. 73–405, 1973–2 C.B. 321.

218.24 Trust for minor; income interest. Income from a trust for a minor child was to be accumulated or expended for the child's benefit at the trustee's discretion prior to the child reaching age 21, and was to be paid to the child at least annually thereafter. The income interest during the child's minority qualified as a present interest solely by reason of section 2503(c). *Held,* that income interest and the income interest for the period after the child's reaching age 21 constitute a single present interest qualifying for the annual exclusion. (Sec. 2503, '54 Code.)

David H. Levine, 63 T.C. 136, Nonacq., 1978–2 C.B. 3.

Exemption

220.1 Allocation to spouse. Once a husband exhausts his lifetime gift tax exemption, any portion of a gift attributable to him is taxable and cannot be offset by his wife's remaining exemption.§§86.3(a), 86.12. (Secs. 1000, 1004, '39 Code; Secs. 2511, 2522, '54 Code.)

Rev. Rul. 54–30, 1954–1 C.B. 207.

220.2 Community property division. A donor has not lost his specific lifetime exemption where he had used it in reporting a division of community property when the regulations considered such a division a taxable gift but which provision was subsequently eliminated from the regulations; it is still available to him.§86.12. (Sec. 1004, '39 Code; Sec. 2522, '54 Code.)

Rev. Rul. 55–709, 1955–2 C.B. 609.

220.3 Contributions; political party. One who makes a contribution to a political party or to any candidate for public office in excess of $3,000, or a husband and wife who make such a contribution in excess of $6,000 must file a Federal Gift Tax Return, Form 709. To the extent that the contribution is in excess of such amount, it may be applied against any unused portion of the $30,000 lifetime specific exemption.§§25.2513–1, 25.2521–1, 25.2522(a)–1, 25.6019–1. (Secs. 2513, 2521, 2522, 6019; '54 Code.)

Rev. Rul. 59–57, 1959–1 C.B. 626.

220.4 Revocation of election; prior year deficiency. A taxpayer who had elected to claim the entire available specific exemption of $30,000 in 1972 may not revoke that election in order to apply the exemption against gifts made in an earlier year for which no return was filed and for which the Service in 1976 assessed a deficiency based on its finding that such gifts had been transfers of future interests not eligible for the annual exclusion.§25.2521–1. (Sec. 2521, '54 Code.)

Rev. Rul. 78–106, 1978–1 C.B. 300.

220.5 Tuition payment; foreign university. A tuition payment made after December 31, 1981, directly to a foreign educational institution, described in 170(b)(1)(A)(ii), is exempt from the gift tax under section 2503(e). (Secs. 170, 2503; '54 Code.)

Rev. Rul. 82–143, 1982–2 C.B. 220.

220.6 Used in lieu of marital deduction; recovery. A donor, who failed to claim the marital deduction allowable for gifts made in prior years, thereby exhausting the allowable specific exemption, may recover in the current year for use, the portions of specific deductions actually claimed and equal to the amounts that should have been claimed as marital deductions. §§25.2521–1, 25.2523(a)–1. (Secs. 2521, 2523; '54 Code.)

Rev. Rul. 76–451, 1976–2 C.B. 304.

Extension of time

(See: ADMINISTRATIVE)

Forms

(See: ADMINISTRATIVE)

Fraud

(See: ADMINISTRATIVE: Criminal prosecutions; Fraud; Penalties; Suits

Future interests

(See: Exclusions; Property: Interests)

Gifts

222.1 Annuities purchased from exempt organization. Taxpayer paid *x* dollars to a charitable organization for an annuity to be paid him, his wife, and the survivor. The present value of the annuity is more than he paid for it. *Held,* taxpayer made a gift to his wife of that portion of the *x* dollars paid for the annuity which is allocable to her.§86.2. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 55–388, 1955–1 C.B. 233.

222.2 Annuity contract. Taxpayer sold an unencumbered life insurance policy to a charitable organization for an amount equal to his basis therein donating his remaining interest to charity. At the same time, he made a gift of an unencumbered annuity contract to his son. In the following year, both contracts matured and were surrendered by the donees. *Held,* the donor receives taxable income at the time the insurance company pays the donees, a gift of such a contract to a charitable organization is a charitable gift in the year the contract is transferred, and a gift of the contract to his son is subject to gift tax for the year of its transfer.§§25.2501–1, 25.2512–6. (Secs. 2501, 2512; '54 Code.)

Rev. Rul. 69–102, 1969–1 C.B. 32.

222.3 Antenuptial agreement. The taxpayer entered into an antenuptial agreement which provided that in lieu of dower and marital interests, he would transfer a certain sum to his fiancee after their marriage. The transfer was made in two parts, one five years later and the other thirteen years later. *Held,* no gift tax was due for the years in which the transfers were made because the gift occurred at the time of the marriage, when the contract became binding and enforceable, and no gift tax law was in effect at that time. (Sec. 501, Revenue Act of 1932; Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Ira C. Copley, 15 T.C. 17, Acq., 1965–2 C.B. 4.

222.4 Check or note. The gift of a donor's own check or note is not complete until the check is paid or negotiated for value to a third person, or the note is paid or transferred for value. G.C.M. 16460 superseded. Clarified by Rev. Rul. 84–25. §25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 67–396, 1967–2 C.B. 212.

222.5 Commissions increase waived by trustee. The waiver by trustee of a testamentary trust, not a beneficiary of the trust, of the increase in statutory commissions permitted by a change in State law does not result in income or gift tax liability to the trustee.§25.2501–1. (Secs. 61, 2501; '54 Code.)

Rev. Rul. 70–237, 1970–1 C.B. 13.

222.6 Commissions waived by executor. An executor does not make a taxable gift by waiving his right to commissions allowed under State law before rendering any services or otherwise becoming entitled to them. Distinguished by Rev. Rul. 64–225. Clarified by Rev. Rul. 66–167. (Sec. 2501, '54 Code.)

Rev. Rul. 56–472, 1956–2 C.B. 21

222.7 Commissions waived by executor of estate. The act of waiving statutory fees and commissions by an executor of an estate within a reasonable time after commencing to serve as executor if he took no other action which was inconsistent with a fixed and continuing intention to render gratuitous service will not result in a gift for Federal gift tax purposes. Rev. Rul. 56–472 clarified and Rev. Rul. 64–225 distinguished.§25.2501–1. (Sec. 2501, '54 Code.)

Rev. Rul. 66–167, 1966–1 C.B. 20.

222.8 Commissions waived by trustee. The waiver of statutory commissions by the trustee of a testamentary trust, subsequent to the years to which such commissions relate, constitutes a transfer of property subject to the Federal gift tax where the antecedent actions of the trustee have involved the long-continued retention of fiduciary powers to release said commissions for unrestricted personal dominion and control. Rev. Rul. 56–472 distinguished and Rev. Rul. 66–167 clarified.§25.2501–1. (Sec. 2501, '54 Code.)

Rev. Rul. 64–225, 1964–2 C.B. 15.

222.9 Community interest transferred to testamentary trust. The effective date of a gift, under an agreement that was properly executed in compliance with section 26.16.120 of the Revised Code of the State of Washington, whereby a wife agrees to transfer her community interest in her husband's estate to a testamentary trust for her benefit when his estate is settled, is the date of the husband's death.§25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 69–346, 1969–1 C.B. 227.

222.10 Community property; re-registration of stock in wife's name. The re-registration by a husband of one-half the shares of stock held as New Mexico community property into his wife's name to be held as her separate property is a gift by the husband of his survivorship interest in such stock. Modified by Rev. Rul. 75–551.§25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 70–401, 1970–2 C.B. 197.

222.11 Community property; re-registration of stock in wife's name. After June 1973, the re-registration by a husband of one-half the shares of stock held as New Mexico community property into his wife's name to be held as her separate property is not considered to be a gift. Rev. Rul. 70–401 modified. §25.2511–2. (Secs. 1002, 2511; '54 Code.)

Rev. Rul. 75–551, 1975–2 C.B. 378.

222.12 Contingent on college graduation. An individual promised to pay the individual's child a sum of money if the child graduated from college. The child graduated in a later year, but the parent refused to pay the money. The child sued, and the parent paid the promised sum of money under a judgement of the local court in the year after the year of graduation. For federal gift tax purposes, the parent made a gift to the child on the date of graduation, the date the parent's promise became enforceable and determinable in value. §25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 79–384, 1979–2 C.B. 344.

222.13 Death benefit. An employee entered into an employment contract in which the employer agreed to pay a death benefit of twice the annual salary at the time of death to the employee's surviving spouse, but only if the employee was still employed at the time of death. The death benefit was not funded. The employee made a gift of a present interest in the quarter in which death occurred—the time when the value of the death benefit became ascertainable—and the gift qualifies for the annual exclusion allowable under section 2503(b). §§25.2503–2, 25.2511–1, 25.2512–1. (Secs. 2503, 2511, 2512; '54 Code.)

Rev. Rul. 81–31, 1981–1 C.B. 475.

222.14 Discretionary trust; assets subject to claims of grantor's creditors. The transfer of property to an irrevocable inter vivos trust created in, and administered under the laws of, a state in which the trust is deemed a "discretionary trust" whose assets are subject to claims of the grantor's creditors, does not constitute a completed gift. §25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 76–103, 1976–1 C.B. 293.

222.15 Forgiveness of annual debt obligation. The transfer of real property, secured by a purchase money mortgage, from a grandparent to two grandchildren in return for non-interest-bearing nonnegotiable notes, which are equal in amount to the annual exclusion and are to be forgiven annually, was not a bona fide sale made at arm's length between the parties but was a transfer of the real estate subject to gift tax.§25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 77–299, 1977–2 C.B. 343.

222.16 Forgiveness of annual debt obligation; transfer of present interest. The transfer of a present interest in real property in consideration of a noninterest-bearing vendor's lien note, the annual payments on which were forgiven as they came due, was a gift only to the extent of the note forgiven in a given year.

Selsor R. Haygood, 42 T.C. 936, Nonacq., 1977–2 C.B. 2.

222.17 Forgiveness of annual debt obligations; transfer of remainder interest. Transfers of remainder interests in certain real property by taxpayers to their children and grandchildren in consideration of non-interest-bearing vendor's lien notes, the annual payments on which were forgiven as they came due, were gifts in the year of transfer only to the extent that the value of the transferred interests exceeded the face amount of the notes; furthermore, the forgiveness of the notes was a gift only to the extent of the notes forgiven in a given year.

J.W. Kelley, 63 T.C. 321, Nonacq., 1977–2 C.B. 1.

222.18 Insurance proceeds; simultaneous deaths of spouses. An individual who owned an insurance policy on his spouse's life naming the trustee of a living trust as beneficiary, and who pursuant to local law was presumed to have survived his spouse when they died simultaneously, is deemed to have made a gift of the insurance proceeds to the trustee subject to the provisions of section 2501 and such proceeds are also includible in his gross estate under section 2036. §§20.2036–1, 25.2511–1. (Secs. 2036, 2511; '54 Code.)

Rev. Rul. 77–48, 1977–1 C.B. 292.

222.19 Interest-free demand loans and low interest loans. Valuation and reporting requirements are set forth for gifts resulting from low interest and interest-free demand loans outstanding during 1984 and prior years. §§25.2511–1, 25.2512–1. (Sec. 601.602, S.P.R.; Secs. 2511, 2512, 7872, '54 Code.)

Rev. Proc. 85–46, 1985–37 I.R.B. 104.

222.20 Interest-free loans; intrafamily. Under section 2501, intrafamily, interest-free demand loans result in taxable gifts of the reasonable value of the use of the money lent. (Secs. 2501, 2511; '54 Code.)

Dickman, 465 U.S., Ct.D. 2025, 1984–1 C.B. 197.

222.21 Interest-free loans to trust for benefit of children. Interest-free loans by a general partnership to trusts for the benefit of the partners' children and other relatives do not constitute taxable gifts by the partners of the interest-free use of the loaned funds. (Sec. 2511, '54 Code.)

Lester Crown, 67 T.C. 1060, Nonacq., 1978–1 C.B. 2.

222.22 Jointly-held property transferred to trust. The transfer to a trust of jointly-held independently severable property with reserved joint and survivor life estates is a reciprocal exchange between joint tenants, not a gift, to the extent the transfers are of equal value.§25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 69–505, 1969–2 C.B. 179.

222.23 Leaseback of trust property; rental payments. Rental payments made under a family arrangement which provides for the transfer of property in trust for a ten year period for the benefit of the grantor's children with a lease back to the grantor will constitute a completed gift, the value of which is measured by the present worth of the right to receive the net rentals from the property during the term of the trust, provided the right to such rentals is, under the terms of the transfer and applicable State law, fixed or vested. Rev. Rul. 54–9 which held that the rental payment constituted gifts when made is modified. (Sec. 2511, '54 Code.)

Rev. Rul. 57–315, 1957–2 C.B. 624.

222.24 Legatee's payments to third party beneficiaries. Payments by a sole legatee to her nieces and nephews, in accordance with an enforceable contract between the legatee and the niece's and nephew's parents, of the amount of the legacy they would have received if their parents' bequest had not lapsed, were taxable as gifts at the date of the testator's death. §25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 75–71, 1975–1 C.B. 309.

222.25 Life insurance proceeds; transferred to trust created by insured; policy owned by trust beneficiary. An individual purchased and owned a life insurance policy on another's life and designated the trustee of a revocable trust created by the insured as beneficiary. When the insured dies and the policy proceeds become payable to the trustee, the individual, who will receive the income of the trust for life, will have made a completed gift. Further, if the individual does not relinquish the life interest in the trust, the portion of the trust corpus attributable to the individual's contribution of the policy proceeds will be includible in the individual's gross estate at death. §§20.2036–1, 25.2501–1, 25.2511–1, 25.2511–2, 25.2512–9. (Secs. 2036, 2501, 2511, 2512; '54 Code.)

Rev. Rul. 81–166, 1981–1 C.B. 477.

222.26 Medical expenses paid on behalf of another. The direct payment of unreimbursable medical expenses to the service provider by a donor on behalf of another is not subject to gift tax under section 2503(e), effective for gifts made after December 31, 1981. Rev. Ruls. 54–343 and 73–612 amplified. §§25.2503–1, 25.2512–8. (Secs. 2503, 2512; '54 Code.)

Rev. Rul. 82–98, 1982–1 C.B. 141.

222.27 Option; nominal consideration; related party. A transfer to a related party for nominal consideration of an option to purchase real property, for a specified period at a price below fair market value, is a completed gift on the date the option is transferred if under state law the option is binding and enforceable on the date of transfer. §25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 80–186, 1980–2 C.B. 280.

222.28 Partnership interest; sale price less than fair market value. Taxpayer sold buyer a two percent interest in a partnership at book value, which was less than the fair market value at the time of the sale. Taxpayer wanted cash for personal use, and attempted unsuccessfully to sell the interest at a higher price. The Tax

Court, finding that the sale was a bona fide arm's-length transaction, without donative intent, in the ordinary course of business, held that the difference between the sale price and the fair market value should not be treated as a taxable gift. (Sec. 2512, '54 Code.)

Carl E. Weller, 38 T.C. 790, Acq., 1963-1 C.B. 4.

222.29 Payments for jointly-held real property. An individual who provides the funds for the down payment for a purchase of real property and has title conveyed to the joint ownership, with rights of survivorship, of the individual and the individual's two children, any of whom under local law may unilaterally sever his or her interest, has made taxable gifts of one-third interests to each of the children, valued at one-third of the down payment. The individual's subsequent payments without expectation of reimbursement of the total amounts due monthly on the mortgage are also gifts, each equal to one-third of each payment. §§25.2511-1, 25.2512-8. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 78-362, 1978-2 C.B. 248.

222.30 Payments from incapacitated ward's estate; Florida. Court-approved payments made under Florida law by a guardian from the estate of an incapicated ward to a person who is not a legal dependent of the ward are transfers subject to the gift tax.§25.2511-1. Amplified by Rev. Rul. 82-91. (Sec. 2511, '54 Code.)

Rev. Rul. 73-612, 1973-2 C.B. 322.

222.31 Payments to equalize inheritance. A cash payment by one of two heirs to the other to equalize their respective inheritances from a decedent who had made unconditional lifetime gifts to them of real property as advancements of their shares of the estate and left a will directing that the lifetime gifts, valued as of the date of death, be included in the value of the residuary estate, which was to be divided between them, is a voluntary transfer of property subject to gift tax.§25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 77-372, 1977-2 C.B. 344.

222.32 Payments to relatives of incompetent pursuant to court order. Moneys paid by the committee of an incompetent person to relatives of the incompetent pursuant to court order and without consideration are subject to the gift tax. E.T. 4 superseded.§25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 67-280, 1967-2 C.B. 349.

222.33 Pledge of donor honored by third party. An individual made a binding pledge to a charitable organization that was honored by a third party. The individual is considered to have made a gift to the charity at the time the pledge became enforceable, and the third party made a gift to the individual at the time the pledge was honored. The individual is entitled to a charitable gift deduction, but the third party is not. §§25.2511-2, 25.2522(a)-1. (Secs. 2511, 2522; '54 Code.)

Rev. Rul. 81-110, 1981-1 C.B. 479.

222.34 Political contributions. Expenditures made by taxpayers to finance the election campaigns of various individuals for public office do not constitute transfers taxable as gifts. (Secs. 2501, 2511; '54 Code.)

David W. Carson, 71 T.C. 252, Nonacq., 1979-2 C.B. 2.

222.35 Political contributions. The Service will no longer contend that contributions to or on behalf of political organizations described in section 527(e) are transfers subject to the gift tax, irrespective of when the transfers were made. §25.2501-1. (Sec. 2501, '54 Code.)

Rev. Rul. 82-216, 1982-2 C.B. 220.

222.36 Political contributions; public office candidates. The *Edith R. Stern* decision, which held that amounts spent by taxpayer in attempting to secure the election of candidates to public office are not taxable gifts, will not be followed, except in the Fifth Circuit. In all other areas, transfers to political campaigns without full and adequate consideration will be considered taxable gifts.§25.2512-8. (Sec. 2512, '54 Code.)

Rev. Rul. 72-583, 1972-2 C.B. 534.

222.37 Political contributions; several committees supporting same candidates. Contributions to several not validly separate political committees supporting the same candidates are completed and taxable gifts even though the committees are not separate donees for purposes of the annual gift tax exclusion.§25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 77-131, 1977-1 C.B. 295.

222.38 Political organizations; exclusion. In general, political organizations will be recognized as separate donees for purposes of the annual gift tax exclusion. Where, however, political organizations have essentially the same officers and supported candidates and no substantial independent purpose, the organizations will be treated as one and gifts to them by an individual will be aggregated. Officers or supported candidates will not be deemed to be essentially the same if at least one-third of the officers or candidates are different in each of the committees. Amplified by Rev. Rul. 74-199 with respect to evidentiary requirements. §25.2503-2. (Sec. 2503, '54 Code.)

Rev. Rul. 72-355, 1972-2 C.B. 532.

222.39 Political organizations; exclusion; evidentiary requirements. The $3,000 gift tax exclusion is allowable only for a contribution to a bona fide political committee where in fact: (1) the contribution was made by the donor or his agent to the political committee; (2) the named officers of the committee were its officers; (3) the committee had a bank account and/or records evidencing receipt of the contributions; (4) the committee disbursed contributions for campaign purposes; and (5) the committee filed any required Federal and State reports consistent with the foregoing. Rev. Rul. 72-355 amplified.§25.2503-2. (Sec. 2503, '54 Code.)

Rev. Rul. 74-199, 1974-1 C.B. 285.

222.40 Pre-marital settlement; promise to make future transfers in trust. The taxpayer, prior to his marriage on January 1, 1937, created a "Marriage Settlement Agreement" trust for the benefit of his prospective wife in consideration of her surrendering her marital rights. He transferred securities worth $10,205.62 to the trust, and promised to transfer $10,000 thereto annually for nine consecutive years. He transferred $10,000 annually until 1939, the year the trust terminated by reason of his spouse's death. He filed a gift tax return for 1936, reporting the amount actually transferred thereto in that year. The Commissioner alleged that he made an additional gift of $74,353.30 representing the present value on December 31, 1936, of an annuity of $10,000 per annum for nine years. *Held,* taxpayer's promise to make future transfers to the trust, though enforceable, did not constitute a present taxable gift. (Sec. 2511, '54 Code.)

John D. Archbold, 42 B.T.A. 453, Acq., 1969-1 C.B. 20.

222.41 Property conveyed to induce business relocation. The value of property conveyed on behalf of citizen-grantors to a manufacturing company to induce it to locate a plant on certain property is not subject to the gift tax. G.C.M. 16952 superseded.§25.2512-8. (Sec. 2512, '54 Code.)

Rev. Rul. 68-558, 1968-2 C.B. 415.

222.42 Property conveyed to trust in exchange for annuity. An annuity to be paid exclusively from the assets of a trust, which may be distributed at any time through the exercise of the trust beneficiary's power of appointment, has no fair market value and the entire value of property transferred by the donor to the trust in exchange for the promise of the annuity is a gift for gift tax purposes. §25.2512-8. (Sec. 2512, '54 Code.)

Rev. Rul. 76-491, 1976-2 C.B. 301.

222.43 Property transferred; additional estate tax. When a qualified heir, described in section 2032A(e), makes a gift of qualified real property to a family member who signs the agreement under section 2032A(d), the value of the gift is not reduced by the additional tax that could be subsequently imposed on the family member under section 2032A(c). §25.2512-1. (Secs. 2032A, 2512; '54 Code.)

Rev. Rul. 81-230, 1981-2. C.B. 186.

222.44 Property transferred under antenuptial agreement. The effective date of a gift that is made in future years pursuant to a legally enforceable antenuptial agreement is the date of marriage, provided such gift is susceptible of valuation at that time. (Sec. 2511, '54 Code.)

Rev. Rul. 69-347, 1969-1 C.B. 227.

222.45 Purchase funds from accounts in donees' names. Taxpayer established several savings accounts for members of his family. The Tax Court held that he retained no control over those accounts which were in the name of his wife alone or the wife and one of the children and had apparently transferred all of his ownership in the accounts. Therefore, the wife contributed to the purchase of property subject to the gift tax to the extent that funds used were drawn from the account in her name. (Sec. 2501, '54 Code.)

Dorothy V. Crane, 49 T.C. 85, Acq., 1968-2 C.B. 2.

222.46 Real property; transfers; exclusions; completed gifts. Transfers by a donor of specified portions of real property equal in value to the annual gift tax exclusion allowable for the years of the transfer constitute completed gifts each year of the portions transferred, and each gift qualifies for the annual exclusion under section 2503. §§25.2501-1, 25.2503-3, 25.2511-2. (Secs. 2501, 2503, 2511; '54 Code.)

Rev. Rul. 83-180, 1983-2 C.B. 169.

222.47 Right of reformation; mistake in property interest transferred on deeds of gift. In 1966 and 1967 the taxpayer executed deeds of gift which purported to transfer a stated percentage interest in her one-half undivided interest in certain real property to each of four trusts for the benefit of her sisters. In preparing the deeds of gift her attorney inadvertently inserted a percentage that was double the percentage intended by the taxpayer. *Held,* under the law of Texas, the taxpayer had a right of reformation against the donees due to the attorney's errors in preparing the deeds. Therefore, the taxpayer had the power to revest title in herself as to one-half of the interest purportedly transferred, and no completed gift was made as to that interest. (Sec. 2511, '54 Code.)

Margarita Touche, 58 T.C. 565, Acq., 1972-2 C.B. 3.

222.48 Running of statute of limitations on recovery of loan. An individual who permits the statute of limitatiions to run on recovery of a loan to a family member made a gift, where the debtor had some financial resources available to repay the loan. §25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 81–264, 1981–2 C.B. 185.

222.49 Sale proceeds distributed equally among life tenant and remaindermen. The distribution of the proceeds from the sale of property among the life tenant and remaindermen in equal shares, rather than according to the respective actuarial values, results in a gift under section 2511, in the absence of circumstances that establish the distribution as bona fide, at arm's length, and free from donative intent. §§25.2511–1, 25.2512–8. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 79–225, 1979–2 C.B. 345.

222.50 Separate transferred to community property; Washington State. The written agreement by a husband and wife, residing in Washington State, providing that all real and personal property presently owned or subsequently acquired will be community property results in a single gift of the value of the property interests transferred and additional gifts will occur with respect to separate acquisitions in future years that are converted to community property pursuant to the agreement. G.C.M. 19248 superseded. §25.2511–1. (Secs. 61, 2511; '54 Code.)

Rev. Rul. 77–359, 1977–2 C.B. 24.

222.51 Split-dollar life insurance arrangement; transfer to trust; annual premiums. An employee, as the owner of an insurance policy held under a "split-dollar" arrangement, transferred the rights in the policy to a trust for the benefit of the employee's child. The value of the gift of the policy is the interpolated terminal reserve of the policy plus the proportionate part of the premiums paid before the date of the gift reduced by the value of the employer's interest in the policy. The employee's payment of the annual premiums after the transfer is also a gift. Further, the value of the life insurance provided by the employer, which is included in the employee's income, is deemed transferred to the trust. §§25.2511–1, 25.2512–6. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 81–198, 1981–2 C.B. 188.

222.52 Split-dollar life insurance arrangement; transferred to wife. A corporation entered into a "split-dollar" life insurance arrangement with the spouse of an employee under which the spouse and the corporation each pay a portion of the premiums for a policy on the life of the employee, and the spouse is owner of the policy. The value of the life insurance provided by the corporation which is included in the income of the employee is deemed transferred to the spouse and is subject to gift tax. §§25.2501–1, 25.2511–1. (Secs. 61, 2501, 2511; '54 Code.)

Rev. Rul. 78–420, 1978–2 C.B. 67.

222.53 Stock; transfer conditioned on gift tax payment. A donor transferred stock conditioned on payment of gift tax by the recipients, her children, who agreed to the condition. The Commissioner contended that the transaction was part sale and part gift. *Held,* the donor intended and in fact made a net gift to each recipient; further, the transferee's basis in the stock was the same as the transferor and he is entitled to tack on the transferor's holding period to his own. (Sec. 2511, '54 Code.)

Richard H. Turner, 49 T.C. 356, Nonacq., 1971–1 C.B. 3.

222.54 Tax paid by donee; valuation. The gift tax liability assumed by the donee may be deducted from the value of transferred property if payment of tax by donee is a condition of the transfer. The donor's available unified credit is used to reduce the tax in determining the liability. §§25.2511–2, 25.2512–8. (Secs. 2505, 2511, 2512; '54 Code.)

Rev. Rul. 81–223, 1981–2 C.B. 189.

222.55 Transfer; property sale proceeds. The spouse of the owner of real property demanded and received one half of the proceeds from the sale of the property in exchange for the release of the spouse's inchoate interest, which was similar to a dower interest. The transfer of the sale proceeds is included in computing the amount of taxable gifts made by the owner in the calendar quarter. §25.2512–8. (Secs. 61, 1012, 2512; '54 Code.)

Rev. Rul. 79–312, 1979–2 C.B. 29.

222.56 Transfer in anticipation of death; returned to transferor. The transfer of funds by an individual to his niece in anticipation of his death to pay his outstanding debts, funeral and other expenses incurred in settlement of his estate, was, under state law, an incomplete gift even though the amount transferred could have exceeded the amount required to cover the debts and expenses. Likewise, the niece's return of the funds upon his recovery from illness did not result in a taxable gift.§25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 74–365, 1974–2 C.B. 324.

222.57 Transfer in trust; incident to divorce decree. A donor created a trust pursuant to a divorce settlement by transferring property equal in value to marital and support rights released by the donor's spouse. The terms of the trust provide for a life annuity to the spouse with the remainder payable to the adult child of the parties. The donor is deemed to have received consideration for the transfer to the spouse under section 2516. If the spouse has not specifically bargained for, and relinquished support rights in exchange for, the child's remainder interest, the donor has made a gift to the child. §§20.2043–1, 25.2512–8, 25.2516–1. (Secs. 2043, 2512, 2516; '54 Code.)

Rev. Rul. 79–363, 1979–2 C.B. 345.

222.58 Transfer in trust; incident to divorce. Factual situations illustrate the gift tax consequences of a taxpayer's transfer of property, pursuant to an agreement in contemplation of divorce and in exchange for the spouse's surrender of support rights, to a trust the income from which is payable for the life of the spouse (1) to the spouse with the remainder payable to the children of the taxpayer and spouse, (2) partially to the spouse and partially to a child of the taxpayer and spouse with the remainder payable to the children of the taxpayer and spouse, or (3) to the spouse with the remainder payable to the taxpayer's sibling.§25.2512–8. (Sec. 2512, '54 Code.)

Rev. Rul. 77–314, 1977–2 C.B. 349.

222.59 Transfer in trust; income and corpus to donor; trustee's discretion. The transfer of property to an irrevocable inter vivos trust, under the terms of which the trustee has the discretionary power, entirely voluntary under the trust instrument and applicable state law, to distribute income and principal to the grantor constitutes a completed taxable gift of the entire value of the property transferred. Rev. Rul. 62–13 clarified.§25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 77–378, 1977–2 C.B. 347.

222.60 Transfer in trust; resignation of settlor-trustee. Time of a completed gift by a settlor-trustee who subsequently resigned as trustee of an irrevocable trust providing for income accumulation for beneficiaries, reversion of corpus or its original value, and control in the trustee over disposition of corpus.§25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 72–571, 1972–2 C.B. 533.

222.61 Transfer in trust; retained power to designate beneficiary. Creation of a trust that provides for reversion of principle to the grantor or the grantor's estate after ten years and one month and for distribution of the annual net income to beneficiaries described in sections 170 (c) and 2522 in accordance with the grantor's designation made prior to the beginning of the year or, upon the grantor's failure to so designate, in accordance with the trustee's selection at the end of the year, does not constitute a completed gift. The exercise or lapse of the grantor's power to designate the beneficiary will result in a completed gift; however, no deduction is allowable by virtue of section 2522(c)(2).§§25.2511–2, 25.2522(c)–3. (Secs. 2511, 2522; '54 Code.)

Rev. Rul. 77–275, 1977–2 C.B. 346.

222.62 Transfer in trust; settlor reserving right to income. Where the grantor under an irrevocable trust agreement retained the right to trust income and to direct by her last will the distribution of trust principal, the transfer did not result in a completed gift.§86.3. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 54–342, 1954–2 C.B. 315.

222.63 Transfer in trust; stock of DISC and continued contractural relationship. The tax consequences are discussed of (1) a gift by the shareholders of a manufacturing corporation of stock in a newly formed DISC to trusts for the benefit of their children and (2) a continued contractural relationship between their corporations, pursuant to which sales commissions are paid to the DISC in exchange for no significant services. §§25.2501–1, 25.2511–1, 25.2512–8. (Secs. 2501, 2511, 2512; '54 Code.)

Rev. Rul. 81–54, 1981–1 C.B. 476.

222.64 Transfer incident to agreement in contemplation of divorce. A retired federal employee, in contemplation of a divorce, entered into a written property settlement agreement providing that, after the divorce, the ex-spouse would receive one-half of the employee's annuity payments under the U.S. Civil Service Retirement System. Within two years thereafter, a divorce court that had no power to alter the agreement incorporated it into a divorce decree. The employee did not make a gift to the ex-spouse, because the transfer is deemed to be made for full and adequate consideration in money or money's worth under section 2516. §§20.2043–1, 25.2512–8, 25.2516–1. (Secs. 2043, 2512, 2516; '54 Code.)

Rev. Rul. 80–82, 1980–1 C.B. 209.

222.65 Transfer incident to inadequately funded marital trust; no qualified disclaimer. A pecuniary bequest for the benefit of a surviving spouse is inadequately funded by the executor during probate administration. In the absence of a qualified disclaimer, the marital deduction allowed is the amount that should have funded the marital trust, and the surviving spouse had made a gift to a third-party beneficiary equal to the unfunded amount. §§20.2056(a)–1, 25.2511–1. (Secs. 2056, 2511, 2518; '54 Code.)

Rev. Rul. 84–105, 1984–29 I.R.B. 28.

222.66 Transfer incident to legal separation. The transfer of property under a property settlement agreement incident to a legal separation is a taxable gift to the extent that the value of the transferred property exceeds the value of any support rights surrendered. E.T. 19 superseded.§25.2512–8. (Sec. 2512, '54 Code.)

Rev. Rul. 68–379, 1968–2 C.B. 414.

222.67 Transfer of contingent remainder interests. The terms of a will gave the decedent's twin children, who are the same sex, contingent remainder interests, subject to a life estate, in a testamentary trust and provided that, if one predeceased the life tenant, the surviving twin would receive the entire trust corpus. Prior to the life tenant's death, the twins entered into a legally binding contract in which they agreed that, if one of them predeceased the life tenant, the survivor would transfer one-half of the trust corpus to the children of the deceased. Each twin is considered to be the transferor of the interest received by his or her children, and the transfers are subject to the gift tax upon the execution of the contract. §25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 79–238, 1979–2 C.B. 339.

222.68 Transfer of contingent remainder interests. A trust beneficiary's disclaimer of ownership of a contingent remainder interest in property transferred by will thirty-three years after the interest was created, though still effective under local law, is not "within a reasonable time" and constitutes an indirect gift to a successor in interest subject to gift tax liability. §25.2511–1. (Sec. 2511, '54 Code.)

Jewett, 455 U.S., Ct. D. 2012, 1982–1 C.B. 142.

222.69 Transfers within 3 years of death; intrafamily loan. When an individual transfers cash to the individual's child within 3 years of death in exchange for a term promissory note having a fair market value less than the amount of the transferred cash, the amount includible is the difference between the amount of the loan and the fair market value of the note on the date of the gift. §§20.2033–1, 20.2043–1, 25.2512–8. (Secs. 2033, 2035, 2043, 2512; '54 Code.)

Rev. Rul. 81–286, 1981–2 C.B. 177.

222.70 Trust property. Where a gift consists of a transfer of property in trust, the amount of the gift for the purpose of computing gift tax is the value of the property at the date of transfer undiminished by trustees' commissions. E.T. 7 superseded.§25.2512–1. (Sec. 2512, '54 Code.)

Rev. Rul. 67–230, 1967–2 C.B. 352.

222.71 U.S. Treasury notes; registered in joint names. An individual's purchase and registration of U.S. Treasury notes in the name of the purchaser and another with a right of survivorship in a jurisdiction in which this registration creates a joint tenancy results in a completed gift of the survivorship rights in the notes and an undivided one-half interest in the interest payments and redemption rights pertaining to the notes. Purchase and registration of Treasury notes in a jurisdiction in which a joint tenancy is not created by such registration results in a gift of the survivorship rights in the interest payments and in the notes at maturity. Computation of the value of the gifts in both situations is set forth.§25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 78–215, 1978–1 C.B. 298.

222.72 Unified credit; adjustment to value of gift. A donor's use of the unified credit does not result in the payment or assessment of the gift tax which would preclude the subsequent adjustment to the value of the gift. §§25.2501–1, 25.2504–2. (Secs. 2501, 2504, 2505; '54 Code.)

Rev. Rul. 84–11, 1984–1 C.B. 201.

222.73 Valuation; interest-free loans; parents to children. Non-interest bearing loans made by a parent to a corporation, wholly-owned by his son, in return for two promissory notes, one payable in ten years and the other payable upon demand, constitute a gift to the son of the value of the use of the money. The value of the right to use the money loaned for the fixed period is subject to tax at the time the money and note were exchanged. A gift was made of the use of the money subject to the demand note during so much of each quarter of the year as such use was permitted. The Service will not follow the decision in *Elizabeth McGhee Johnson* that interest-free loans, repayable upon demand, made by parents to their children do not constitute gifts.§25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 73–61, 1973–1 C.B. 408.

222.74 Voluntary increase in support payments. A post divorce voluntary amendment was made to a separation agreement that was incorporated in a divorce decree by a state court in a state whose law provides that such agreements are not subject to subsequent modification by the court. The increase in the support payments resulting from the amendment constitutes a gift at the time each payment is made. §25.2512–8. (Secs. 2512, 2516; '54 Code.)

Rev. Rul. 79–118, 1979–1 C.B. 315.

Husband and wife

(See also: Joint Interests; Marital deduction)

224.1 Condominium unit; tenancies by the entirety. A taxpayer who purchases a condominium unit and creates a joint tenancy with his spouse in a state that does not specify if a condominium is real or personal property is considered to have created a tenancy by the entirety in real property.§25.2515–1. (Sec. 2515, '54 Code.)

Rev. Rul. 77–423, 1977–2 C.B. 352.

224.2 Consent affecting all gifts during year. Where a husband and his wife elect to treat any gifts of property made by one of the spouses to third persons during the year as having been made one-half by each spouse, the consent which is executed for that year will apply to all gifts made by the spouses during the year, including every gift of separate property made by the husband or the wife even though a consent is executed only on one of the separate gift tax returns which are filed.§86.3(a). (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 146, 1953–2 C.B. 292.

224.3 Division of community property. A donor has not lost his specific lifetime exemption where he had used it in reporting a division of community property when the regulations considered such a division a taxable gift but which provision was subsequently eliminated from the regulations; it is still available to him.§86.12. (Sec. 1004, '39 Code; Sec. 2522, '54 Code.)

Rev. Rul. 55–709, 1955–2 C.B. 609.

224.4 Divorce invalidated by State court. Where a State court, in a proceeding in which there is personal jurisdiction of the parties or jurisdiction of the subject matter of the action, declares a prior divorce to be invalid, the Service will usually follow the later court decision rather than the prior divorce decree for Federal income, estate, and gift tax purposes. In this regard the Service will not follow the *Herman Borax* and *Harold E. Wondsel* decisions.§§20.2056(a)–1, 25.2523(a)–1. (Secs. 71, 215, 2056, 2523; '54 Code.)

Rev. Rul. 67–442, 1967–2 C.B. 65.

224.5 Exemption; allocation to spouse. Once a husband exhausts his lifetime gift tax exemption, any portion of a gift attributable to him is taxable and cannot be offset by his wife's remaining exemption.§§86.3(a), 86.12. (Secs. 1000, 1004, '39 Code; Secs. 2511, 2522, '54 Code.)

Rev. Rul. 54–30, 1954–1 C.B. 207.

224.6 Future interest; tenancy by the entirety; North Carolina. The interest of a wife in real property conveyed as a gift to her and her husband as tenants by the entirety in North Carolina, where the wife is excluded from any right to the use or income from property during the existence of such tenancy, is not a present interest and does not qualify for the $3,000 annual exclusion. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 75–8, 1975–1 C.B. 648.

224.7 Jointly held property; divorce. A spouse purchased real property with separate funds and took title in the names of both spouses either as tenants by the entirety or as joint tenants with right of survivorship. In a state where a subsequent divorce converts a tenancy by the entirety or a joint tenancy into a tenancy in common, such a divorce would result in a gift of one-half the value of the property. In a state where a joint tenancy is not terminated by divorce, no gift results. Upon the contributor's death more than three years after the divorce the portion of the property that was not considered a gift is includible in the contributor's gross estate. §§20.2033–1, 20.2040–1, 25.2515–1. (Secs. 2033, 2040, 2515; '54 Code).

Rev. Rul. 80–241, 1980–2 C.B. 273.

224.8 Overassessment of wife and deficiency of spouse. Prior to marriage a gift was made by the husband to a third party, and one-half of the value was included in the gift tax return of each of the spouses with the tax shown to be due on both returns paid by the husband. An overassessment of tax on the wife's return may be applied against a deficiency assessed against the husband and a claim for refund of the overassessment by the wife may be rejected in full.§301.6402–1. (Sec. 6402, '54 Code.)

Rev. Rul. 59–39, 1959–1 C.B. 639.

224.9 Present interest; tenancy by the entirety; Tennessee. The interest of a wife in property transferred as a gift to her and her husband as tenants by the entirety in Tennessee qualifies as a present interest for purposes of the annual exclusion under section 2503(b). Rev. Rul. 74–345 revoked. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 79–54, 1979–1 C.B. 313.

224.10 Promissory notes. The taxpayer's husband was a partner in an investment banking and securities business. Fearing that his large indebtedness would cause his firm to lose its seat on the New York Stock Exchange, he requested his bank to substitute a promissory note signed by the taxpayer for his own notes. The taxpayer signed an interest-bearing, negotiable demand note payable to the bank and the husband's notes were marked paid. The collateral which had been on the husband's prior notes was placed on the note signed by the taxpayer. *Held,* the substitution of the taxpayer's promissory note for her husband's notes did not constitute a taxable gift to the husband. (Sec. 501(a), Rev. Act of 1932; Sec. 2501, '54 Code.)

Eleanor A. Bradford, 34 T.C. 1059, Acq. 1961–1 C.B. 4.

224.11 Separate transferred to community property; Washington State. The written agreement by a husband and wife, residing in Washington State, providing that all real and personal property presently owned or subsequently acquired will by community property results in a single gift of the value of the property interests transferred and additional gifts will occur with respect to separate acquisitions in future years that are converted to community property pursuant to the agreement. G.C.M. 19248 superseded. §25.2511–1. (Secs. 61, 2511; '54 Code.)

Rev. Rul. 77–359, 1977–2 C.B. 24.

224.12 Split gifts; consent of spouse. Where the "consent of spouse" paragraph on the Federal gift return, Form 709, filed by the other spouse, has not been executed by either husband or wife, they will not be denied the gift splitting privilege, if on each of their separate gift tax returns they signify their consent to treat all gifts by them to third parites as having been made one-half by each of the spouses.§86.3(a). (Sec. 1000, '39 Code; Sec. 2513, '54 Code.)

Rev. Rul. 188, 1953–2 C.B. 292.

224.13 Split gifts; consent of spouse after due date of return. Spouses may not elect to split gifts made by one spouse after the donor spouse has filed a gift tax return reporting the gifts and the due date for filing the return has passed. §25.2513-2. (Sec. 2513, '54 Code.)

Rev. Rul. 80-224, 1980-2 C.B. 281.

224.14 Split gifts; deaths of spouses within 3 years of gift. If a decedent's spouse dies after the decedent, and a gift that the decedent consented to split is includible in the spouse's estate, the decedent's estate is entitled to recompute its tax. §25.2513-1. (Secs. 2001, 2035, 2512; '54 Code.)

Rev. Rul. 81-85, 1981-1 C.B. 452.

224.15 Split gifts; deaths of spouses within 3 years of gift. Under section 2001(b)(1), no portion of a split gift represents an adjusted taxable gift in the estate of a non-donor spouse, where both spouses die within three years of the transfer, the donor-spouse predeceases the non-donor spouse, and the gift is included in the gross estate of the donor-spouse under section 2035. §25.2513-1. (Secs. 2001, 2035, 2513; '54 Code.)

Rev. Rul. 82-198, 1982-2 C.B. 206.

224.16 Split gifts; effective after death of donor. The gift-splitting benefits do not apply to gifts made which became effective after the death of the donor's spouse.§86.3a. (Sec. 1000(f), '39 Code; Sec. 2513, '54 Code.)

Rev. Rul. 55-506, 1955-2 C.B. 609.

224.17 Split gifts; execution of consent and return; deceased spouse. The spouse of a donor died prior to the due date of the donor's required gift tax return without executing the necessary consent and without executing and filing her own gift tax return. The decedent did not leave an estate which required administration. *Held,* where no legal representative has been appointed and where the surviving spouse has not remarried prior to the end of the calendar year, the surviving donor-spouse may act as the "executor" for the purpose of executing the consent and also executing and filing the gift tax return on behalf of his deceased consenting spouse. §§25.2513-2, 25.6019-1. (Secs. 2513, 6019; '54 Code.)

Rev. Rul. 67-55, 1967-1 C.B. 278.

224.18 Split gifts; life insurance; beneficiaries designated by surviving spouse. A wife who owned insurance policies on her husband's life and designated the beneficiaries on the policies did not make a completed gift until his death and the insurance proceeds paid to the beneficiaries may not be treated as gifts made one-half by each spouse.§25.2513-2. (Sec. 2513, '54 Code.)

Rev. Rul. 73-207, 1973-1 C.B. 409.

224.19 Split gifts; prenuptial agreement; third-party donees. A husband and wife who entered into a prenuptial agreement under which each spouse waived all marital rights in the property of the other will not be denied the gift-splitting privilege if they have signified their consent to treat all gifts made by them to third party donees as having been made one-half by each spouse and if they are otherwise qualified to apply that privilege with respect to the gifts in question.§86.3(a). (Sec. 1000, '39 Code; Sec. 2513, '54 Code.)

Rev. Rul. 55-241, 1955-1 C.B. 470.

224.20 Split gifts; ratification by husband. Gift-splitting benefits are available to a husband and his wife where the gift tax return and consent of the absent husband are filed by the wife as his agent and ratified by him within a reasonable time.§§86.3(a), 86.20. (Secs. 1000, 1006, '39 Code; Secs. 2513, 6019, '54 Code.)

Rev. Rul. 54-6, 1954-1 C.B. 205.

224.21 Split gifts; returns; no gift made by spouse. Where husband and wife have consented to treat gifts made by one spouse to third-party donees as having been made one-half by each of them, the spouse of the donor is not required to file a Federal gift tax return if he or she made no gifts during the calendar year and the value of gifts made by the donor spouse to each such third-party donee during the year does not exceed $6,000. The consent of the husband and wife is to be signified by each of them on the donor's return.§86.20. (Sec. 1006, '39 Code; Sec. 6019, '54 Code.)

Rev. Rul. 54-252, 1954-2 C.B. 322.

224.22 Split gifts; spouse's name signed by taxpayer. A spouse who made a gift, the value of which exceeded the credits and exclusions if gift-splitting was properly elected, may not validly sign the name of the other spouse on the taxpayer signature line or consent of spouse line of returns to elect gift-splitting in the absence of facts or circumstances permitting such signature as agent as provided by section 25.6019-1(d) of the regulations. The filing of correctly signed amended returns by the taxpayer and spouse, filed beyond the time prescribed in section 2513(b), will not perfect the prior returns and such filing is not itself a valid gift-splitting election.§§25.2513-1, 25.6019-1. (Secs. 2513, 6019; '54 Code.)

Rev. Rul. 78-27, 1978-1 C.B. 387.

224.23 Split gifts; timely consent. The taxpayer married *B* in June 1953. In December 1953, he made gifts and on the gift tax returns, filed June 2, 1954, each spouse consented to have such gifts considered as being made one-half by each. Before her marriage, *B* had made gifts in 1953 and the gift tax return therefor was filed by her attorney in fact in March 1954. *Held, B's* return, filed by the attorney in fact, did not become a complete return until it was ratified on June 4, 1954, and the consent to split the taxpayer's gifts, indicated on the returns of June 2, 1954, was timely. (Sec. 1000(f), '39 Code; Sec. 2513, '54 Code.)

Alex Frieder, 28 T.C. 1256, Acq., 1958-2 C.B. 5.

224.24 Split gifts; trust; spouse and other beneficiaries. The gift-splitting provisions do not apply to a gift in trust where the trustee has the discretion to distribute the income or principal thereof to the wife and/or other beneficiaries. It is held that the wife's interest is not severable. (Sec. 2513, '54 Code.)

Rev. Rul. 56-439, 1956-2 C.B. 605.

224.25 Stock in New York cooperative apartment. The interest held by a taxpayer in a New York cooperative apartment as a tenant-stockholder is not considered "real property" under New York law and, therefore, it does not qualify under the exception provided in section 2515(a) of the Code to the general rules for taxing the creation of a tenancy by the entirety.§25.2515-1. (Sec. 2515, '54 Code.)

Rev. Rul. 66-40, 1966-1 C.B. 227.

224.26 Support payments after expiration of separation agreement. The decedent-husband entered into a written separation agreement with his wife providing for nonexcessive payments for her support. Later, he voluntarily increased the payments, and, although the agreement had a fixed expiration date, continued them for seven years thereafter. Finding that the New York law imposed a subsisting obligation of support upon the husband, the Tax Court held that the payments were given for full and adequate consideration in money or money's worth, and hence, decedent's estate was not chargeable with gift tax liability. (Sec. 1002, '39 Code; Sec. 2512, '54 Code.)

Louis Fabrikant, 39 T.C. 714, Acq., 1964-1 (Part 1) C.B. 4.

224.27 Tenancy by the entirety; alteration of management power. An individual, who purchased and held with the individual's spouse as tenants by the entirety, real property located in a state whose law provided that the husband and wife had vested equal rights in the income of the property but that the husband would have exclusive control of the management of the property, elected not to treat the creation of the tenancy as a gift to the spouse. A subsequent change in the law providing that both spouses should be entitled to equal control of the management of the property is not a termination of the tenancy for purposes of section 2515. §25.2515-1. (Sec. 2515, '54 Code.)

Rev. Rul. 79-105, 1979-1 C.B. 316.

224.28 Tenancy by the entirety; post-1981 termination; ERTA. The post-1981 termination of a tenancy by the entirety created before 1982 does not result in an interspousal gift to the noncontributing spouse. §25.2515-1. (Sec. 2515, '54 Code.)

Rev. Rul. 83-178, 1983-2 C.B. 171.

224.29 Tenancy by the entirety; sale of real property. The receipt of a note and a purchase money mortgage by a husband and wife as tenants by the entirety as consideration for the sale of real property similarly owned, purchased by the husband with his individually owned funds and not reported as a gift upon taking title, is a termination of the tenancy by the entirety in the real property and including the wife as an owner of the mortgage constitutes a completed gift the value of which must be ascertained through the use of a special actuarial factor. §25.2515-1(d). (Sec. 2515, '54 Code.)

Rev. Rul. 75-507, 1975-2 C.B. 378.

224.30 Tenants by entirety; transfers within 3 years of death. When the decedent and the decedent's spouse transfer joint tenancy property, as to which there was no election under section 2515(c), within 3 years of the decedent's death, one-half of the value of the property is includible in the decedent's gross estate under section 2035 and the other one-half of the value is reflected in the estate tax computation as an adjusted taxable gift under section 2001. Rev. Rul. 76-348 amplified. §25.2515-1. (Secs. 2001, 2035, 2515; '54 Code.)

Rev. Rul. 81-227, 1981-2 C.B. 168.

224.31 Transfer in trust; incident to divorce decree A donor created a trust pursuant to a divorce settlement by transferring property equal in value to marital and support rights released by the donor's spouse. The terms of the trust provide for a life annuity to the spouse with the remainder payable to the adult child of the parties. The donor is deemed to have received consideration for the transfer to the spouse under section 2516. If the spouse has not specifically bargained for, and relinquished support rights in exchange for, the child's remainder interest, the donor has made a gift to the child. §§20.2043-1, 25.2512-8, 25.2516-1. (Secs. 2043, 2512, 2516; '54 Code.)

Rev. Rul. 79-363, 1979-2 C.B. 345.

224.32 Transfer in trust; incident to divorce. Factual situations illustrate the gift tax consequences of a taxpayer's transfer of property, pursuant to an agreement in contemplation of divorce and in exchange for the spouse's surrender of support rights, to a trust the income from which is payable for the life of the spouse (1) to the spouse with the remainder payable to the children of the taxpayer and spouse, (2) partially to the spouse and partially to a child of the taxpayer and spouse with the remainder payable to the children of the taxpayer and spouse, or (3) to the spouse with the remainder payable to the taxpayer's sibling.§25.2512–8. (Sec. 2512, '54 Code.)

Rev. Rul. 77–314, 1977–2 C.B. 349.

224.33 Transfer incident to agreement in contemplation of divorce. A retired federal employee, in contemplation of a divorce, entered into a written property settlement agreement providing that, after the divorce, the ex-spouse would receive one-half of the employee's annuity payments under the U.S. Civil Service Retirement System. Within two years thereafter, a divorce court that had no power to alter the agreement incorporated it into a divorce decree. The employee did not make a gift to the ex-spouse, because the transfer is deemed to be made for full and adequate consideration in money or money's worth under section 2516. §§20.2043–1, 25.2512–8, 25.2516–1. (Secs. 2043, 2512, 2516; '54 Code.)

Rev. Rul. 80–82, 1980–1 C.B 209.

224.34 Transfer incident to legal separation. The transfer of property under a property settlement agreement incident to a legal separation is a taxable gift to the extent that the value of the transferred property exceeds the value of any support rights surrendered. E.T. 19 superseded.§25.2512–8. (Sec. 2512, '54 Code.)

Rev. Rul. 68–379, 1968–2 C.B. 414.

224.35 Transfer; property sale proceeds. The spouse of the owner of real property demanded and received one half of the proceeds from the sale of the property in exchange for the release of the spouse's inchoate interest, which was similar to a dower interest. The transfer of the sale proceeds is included in computing the amount of taxable gifts made by the owner in the calendar quarter. §25.2512–8. (Secs. 61, 1012, 2512; '54 Code.)

Rev. Rul. 79–312, 1979–2 C.B. 29.

224.36 Voluntary increase in support payments. A post divorce voluntary amendment was made to a separation agreement that was incorporated in a divorce decree by a state court in a state whose law provides that such agreements are not subject to subsequent modification by the court. The increase in the support payments resulting from the amendment constitutes a gift at the time each payment is made. §25.2512–8. (Secs. 2512, 2516; '54 Code.)

Rev. Rul. 79–118, 1979–1 C.B. 315.

224.37 Wife's interest devised by husband with consent. The decedent's husband executed his will to dispose of not only his share but also his wife's share of community property and therein bequeathed and devised certain parcels of real property to his daughter. The decedent, simultaneously with the execution of her husband's will, executed a document consenting and electing to be bound by his will. *Held,* the decedent having executed a "consent" simultaneously with the execution of her husband's will was irrevocably bound by this consent and the effect of the decedent's election was to have her interest in community property pass to her daughter as a gift on the date of her husband's death. Furthermore, the decedent's estate is entitled to a deduction for the gift tax liability as well as a credit for the gift tax. (Secs. 2012, 2033; '54 Code.)

Emma Bressani, 45 T.C. 373, Acq., 1966–2 C.B. 4.

Identifying numbers

(See: ADMINISTRATIVE)

Information

(See: ADMINISTRATIVE: Publicity of information; Returns)

Inspection of records or returns

(See: ADMINISTRATIVE: Books and records; Returns)

Interest

(See: ADMINISTRATIVE: Deficiencies; Overpayments)

Jeopardy assessments

(See: ADMINISTRATIVE: Assessments)

Joint interests

226.1 Divorce. A spouse purchased real property with separate funds and took title in the names of both spouses either as tenants by the entirety or as joint tenants with right of survivorship. In a state where a subsequent divorce converts a tenancy by the entirety or a joint tenacy into a tenancy in common, such a divorce would result in a gift of one-half the value of the property. In a state where a joint tenancy is not terminated by divorce, no gift results. Upon the contributor's death more than three years after the divorce the portion of the property that was not considered a gift is includible in the contributor's gross estate. §§20.2033–1, 20.2040–1, 25.2515–1. (Secs. 2033, 2040, 2515; '54 Code.)

Rev. Rul 80–241, 1980–2 C.B. 273.

226.2 Real property; payments by one cotenant. An individual who provides the funds for the down payment for a purchase of real property and has title conveyed to the joint ownership, with rights of survivorship, of the individual and the individual's two children, any of whom under local law may unilaterally sever his or her interest, has made taxable gifts of one-third interests to each of the children, valued at one-third of the down payment. The individual's subsequent payments without expectation of reimbursement of the total amounts due monthly on the mortgage are also gifts, each equal to one-third of each payment. §§25.2511–1, 25.2512–8. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 78–362, 1978–2 C.B. 248.

226.3 Tenancy by the entirety; alteration of management power. An individual, who purchased and held with the individual's spouse as tenants by the entirety, real property located in a state whose law provided that the husband and wife had vested equal rights in the income of the property but that the husband would have exclusive control of the management of the property, elected not to treat the creation of the tenancy as a gift to the spouse. A subsequent change in the law providing that both spouses should be entitled to equal control of the management of the property is not a termination of the tenancy for purposes of section 2515. §25.2515–1. (Sec. 2515, '54 Code.)

Rev. Rul. 79–105, 1979–1 C.B. 316.

226.4 Tenancy by the entirety; North Carolina. The interest of a wife in real property conveyed as a gift to her and her husband as tenants by the entirety in North Carolina, where the wife is excluded from any right to the use or income from property during the existence of such tenancy, is not a present interest and does not qualify for the $3,000 annual exclusion. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 75–8, 1975–1 C.B. 648.

226.5 Tenancy by the entirety; post–1981 termination; ERTA. The post–1981 termination of a tenancy by the entirety created before 1982 does not result in an interspousal gift to the noncontributing spouse. §25.2515–1. (Sec. 2515, '54 Code.)

Rev. Rul. 83–178, 1983–2 C.B. 171.

226.6 Tenancy by the entirety; property transfered to charitable remainder annuity trust. An illustration is given of the Federal gift tax consequences of the transfer of tenancy by the entirety property, purchased with the separate funds of a spouse who did not elect to report the creation of the tenancy as a gift, to a charitable remainder annuity trust in which the transferors retained joint and survivor life estates. §25.2515–3. (Sec. 2515, '54 Code.)

Rev. Rul. 76–157, 1976–1 C.B. 306.

226.7 Tenancy by the entirety; sale of real property. The receipt of a note and a purchase money mortgage by a husband and wife as tenants by the entirety as consideration for the sale of real property similarly owned, purchased by the husband with his individually owned funds and not reported as a gift upon taking title, is a termination of the tenancy by the entirety in the real property and including the wife as an owner of the mortgage constitutes a completed gift the value of which must be ascertained through the use of a special actuarial factor. §25.2515–1(d). (Sec. 2515, '54 Code.)

Rev. Rul. 75–507, 1975–2 C.B. 378.

226.8 Tenancy by the entirety; Tennessee. The interest of a wife in property transferred as a gift to her and her husband as tenants by the entirety in Tennessee qualifies as a present interest for purposes of the annual exclusion under section 2503(b). Rev. Rul. 74–345 revoked. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 79–54, 1979–1 C.B. 313.

226.9 Tenancy by the entirety; transfers within 3 years of death. No portion of the value of real property purchased by one spouse more than three years before death and held by the spouses in joint tenancy is included in the purchaser's gross estate under section 2035 where qualified joint interests are created in that property within three years of the purchaser's death. §§23.1, 25.2515–1. (Secs. 2035, 2040, 2515; '54 Code.)

Rev. Rul. 82–159, 1982–2 C.B. 210.

226.10 U.S. Treasury notes. An individual's purchase and registration of U.S. Treasury notes in the name of the purchaser and antoher with a right of survivorship in a jurisdiction in which this registration creates a joint tenancy results in a completed gift of the survivorship rights in the notes and an undivided one-half interest in the interest payments and redemption rights pertaining to the notes. Purchase and registration of Treasury notes in a jurisdiction in which a joint tenancy is not created by such registration results in a gift of the suvivorship rights in the interest payments and in the notes at maturity. Computation of the value of the gifts in both situations is set forth.§25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 78–215, 1978–1 C.B. 298.

Levy

(See: ADMINISTRATIVE)

Liability for tax

(See: ADMINISTRATIVE)

Liens

(See: ADMINISTRATIVE)

Life insurance

228.1 Incidents of ownership assigned donee. Where a policy of insurance, which grants to the owner the usual incidents of ownership, including the right to change the beneficiary and the right to surrender the policy for its cash value, if any, is transferred or assigned to a donee as absolute owner, and the donee, or his guardian, is not restricted in any manner from exercising all legal incidents of ownership in the policy by prior endorsement or otherwise, a gift of the policy and subsequent payment of premiums thereon by the donor will constitute gifts of present interests.§86.11. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 55–408, 1955–1 C.B. 113.

228.2 Premiums; policies held in trust. Under the terms of a trust instrument, the taxpayer paid certain amounts to the trustees to be applied toward the payment of the premiums on the life insurance policies held in trust for the benefit of the taxpayer's wife. *Held*, the taxpayer intended to give his wife a present interest right to the trust principal, which included the insurance policies; thus, the amounts paid by the taxpayer are eligible for the annual gift tax exclusions. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Harbeck Halsted, 28 T.C. 1069, Acq., 1958–2 C.B. 5.

228.3 Premiums; policy held in trust. Life insurance premiums voluntarily paid by an employer with respect to a group term policy held by an irrevocable trust created by an employee are subject to tax as indirect transfers by the employee and qualify as a gift of a present interest for purposes of the annual $3,000 exclusion. §§25.2503–3, 25.2511–1. (Secs. 2503, 2511; '54 Code.)

Rev. Rul. 76–490, 1976–2 C.B. 300.

228.4 Premiums; policy held in trust. A company paid life insurance premiums on behalf of an employee who assigned the policy to an irrevocable trust with the requirement that the trustee retain the proceeds and pay income from the proceeds periodically to the trust beneficiaries after the employee's death. Neither the employee nor the trust had a contractual right to require the employer to maintain the policy. The present payment of premiums is a gift by the employee of a future interest and does not qualify for the annual exclusion under section 2503(b). §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 79–47, 1979–1 C.B. 312.

228.5 Proceeds; simultaneous deaths of spouses. An individual who owned an insurance policy on his spouse's life naming the trustee of a living trust as beneficiary, and who pursuant to local law was presumed to have survived his spouse when they died simultaneously, is deemed to have made a gift of the insurance proceeds to the trustee subject to the provisions of section 2501 and such proceeds are also includible in his gross estate under section 2036.§§20.2036–1, 25.2511–1. (Secs. 2036, 2511; '54 Code.)

Rev. Rul. 77–48, 1977–1 C.B. 292.

228.6 Proceeds; transferred to trust; policy owned by trust beneficiary. An individual purchased and owned a life insurance policy on another's life and designated the trustee of a revocable trust created by the insured as beneficiary. When the insured dies and the policy proceeds become payable to the trustee, the individual, who will receive the income of the trust for life, will have made a completed gift. Further, if the individual does not relinquish the life interest in the trust, the portion of the trust corpus attributable to the individual's contribution of the policy proceeds will be includible in the individual's gross estate at death. §§20.2036–1, 25.2501–2, 25.2511–1, 25.2511–2, 25.2512–9. (Secs. 2036, 2501, 2511, 2512; '54 Code.)

Rev. Rul. 81–166, 1981–1 C.B. 477.

228.7 Split-dollar; transfer to trust. An employee, as the owner of an insurance policy held under a "split-dollar" arrangement, transferred the rights in the policy to a trust for the benefit of the employee's child. The value of the gift of the policy is the interpolated terminal reserve of the policy plus the proportionate part of the premiums paid before the date of the gift reduced by the value of the employer's interest in the policy. The employee's payment of the annual premiums after the transfer is also a gift. Further, the value of the life insurance provided by the employer, which is included in the employee's income, is deemed transferred to the trust. §§25.2511–1, 25.2512–6. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 81–198, 1981–2 C.B. 188.

228.8 Split-dollar; transferred to wife. A corporation entered into a "split-dollar" life insurance arrangement with the spouse of an employee under which the spouse and the corporation each pay a portion of the premiums for a policy on the life of the employee, and the spouse is owner of the policy. The value of the life insurance provided by the corporation which is included in the income of the employee is deemed transferred to the spouse and is subject to gift tax. §§25.2501–1, 25.2511–1. (Secs. 61, 2501, 2511; '54 Code.)

Rev. Rul. 78–420, 1978–2 C.B. 67.

Limitation period
(See: ADMINISTRATIVE)

Marital deduction

230.1 Annuity; civil service. The election of a survivor annuity under the Civil Service Retirement System by a retiring Federal employee is a transfer for which the marital deduction is not allowable.§25.2523(a)–1. (Sec. 2523, '54 Code.)

Rev. Rul. 72–62, 1972–1 C.B. 311.

230.2 Gift to corporation; spouse stockholder. The transfer of property to a corporation that is equal to the spouse's proportionate interest in the corporation represents a gift to the spouse that qualifies for the marital deduction. §§25.2503–3, 25.2523(a)–1. (Secs. 2503, 2523; '54 Code.)

Rev. Rul. 71–443, 1971–2 C.B. 337.

230.3 Not claimed; recovery of specific exemption erroneously used. A donor, who failed to claim the marital deduction allowable for gifts made in prior years, thereby exhausting the allowable specific exemption, may recover in the current year for use, the portions of specific deductions actually claimed and equal to the amounts that should have been claimed as marital deductions. §§25.2521–1, 25.2523(a)–1. (Secs. 2521, 2523; '54 Code.)

Rev. Rul. 76–451, 1976–2 C.B. 304.

230.4 Terminable interests; U.S. savings bonds. Gifts of U.S. savings bonds Series E and G registered in the name of a donee spouse and payable on her death to the donor are terminable interests. Accordingly, no portion of the value of such bonds qualifies for the gift tax marital deduction.§86.16(b). (Sec. 1004, '39 Code; Sec. 2522, '54 Code.)

Rev. Rul. 54–410, 1954–2 C.B. 321.

230.5 Transfers in trust; administrative powers conferred on fiduciary. Examples are provided to illustrate the principle that directions to, or powers conferred upon, an executor or trustee under a will or inter vivos trust instrument or by local law (as aids in managing trusts) do not result in the disallowance or dimunition of the marital deduction.§§20.2056(b)–5, 25.2523(e)–1. (Secs. 2056, 2523; '54 Code.)

Rev. Rul. 69–56, 1969–1 C.B. 224.

230.6 Trust; remainder interest transferred to spouse. A gift to a spouse of a vested indefeasible remainder interest in a trust such as would be includible in her gross estate in the event she should die during the 12-year period of the trust qualifies for the gift tax marital deduction.§86.16(a). (Sec. 1004, '39 Code; Sec. 2522, '54 Code.)

Rev. Rul. 54–470, 1954–2 C.B. 320.

Minors

232.1 Discretion to compel distribution of trust corpus. A gift to a minor under a trust that confers on its beneficiary upon reaching age 21 the right to compel immediate distribution of the corpus by written notice to the trustee that is either (1) a continuing right to compel immediate distribution or to permit the trust to continue by its own terms or (2) a right to compel immediate distribution for a limited period that, if not exercised, will permit the trust to continue by its own terms is not a gift of a future interest and qualifies for the annual exclusion. Rev. Rul. 60–218 revoked.§25.2503–4. (Sec. 2503, '54 Code.)

Rev. Rul. 74–43, 1974–1 C.B. 285; Martha J. Heidrich, 55 T.C. 746, Acq., 1974–1 C.B. 2.

232.2 Income interest. In three cases involving gifts to minors, the Tax Court held that a gift of an income interest alone constitutes a gift of "property" under section 2503 (c) of the Code and qualifies for the annual per donee exclusion. (Sec. 2503, '54 Code.)

Robert Herr, 35 T.C. 732, Jacob Konner, 35 T.C. 727, and Carl E. Weller, 38 T.C. 790; Acqs., 1968–2 C.B. 2.

232.3 Income interest in trust; present interest. Income from a trust for a minor child was to be accumulated or expended for the child's benefit at the trustee's discretion prior to the child reaching age 21, and was to be paid to the child at least annually thereafter. The income interest during the child's minority qualified as a present interest solely by reason of section 2503(c). *Held*, that income interest and the income interest for the period after the child's reaching age 21 constitute a single present interest qualifying for the annual exclusion. (Sec. 2503, '54 Code.)

David H. Levine, 63 T.C. 136, Nonacq., 1978–2 C.B. 3.

232.4 No interest in trust corpus. A gift of trust income to a minor meets the requirements of section 2503(c) of the Code so as to qualify for the annual exclusion even though the beneficiary has no interest in the trust corpus.§25.2503–4. (Sec. 2503, '54 Code.)

Rev. Rul. 68–670, 1968–2 C.B. 413.

232.5 Parents as guardian of minor. The taxpayers made gifts of stock to their minor grandchildren under guardianship. The language of the instrument making the gift authorized, but did not require, the guardian to expend the donated property or the income therefrom for the donee's support, maintenance and education. The parents of the donees were the guardians. Under state law parents of minors were prevented from using the estates of the minor children or the income therefrom for the support of the minors where the parents were financially able to support the minors. *Held*, the gifts to the grandchildren were gifts of present interests. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Beatrice B. Briggs, 34 T.C. 1132, Acq., 1961–1 C.B. 4.

232.6 Power of appointment; inter vivos trust. A minor decedent-beneficiary of an inter vivos trust created by a gift of a present interest, who died without having exercised the testamentary power of appointment granted under the trust possessed a general power of appointment at the time of death even though under local law the minor was legally incompetent to execute a will at the time of death, and the value of the trust assets at the date of death is includible in the minor's gross estate. §§20.2041-3, 25.2503-4. (Secs. 2041, 2503; '54 Code.)

Rev. Rul. 75-351, 1975-2 C.B. 368.

232.7 Right to demand income or principal. Taxpayers made gifts to trusts created for the benefit of minor grandchildren. The beneficiaries, their duly appointed guardians, or their parents were given the right to demand and receive all or part of the trust income or principal. The parents were capable of supporting the children, and there were no guardians except with respect to two of the gifts. It was not anticipated that any such demand would be made. *Held*, the gifts were not of future interests because of the right to demand the trust income or principal and the taxpayers were entitled to the annual exclusion. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

George W. Perkins, 27 T.C. 601, Acq., 1965–2 C.B. 6.

232.8 Securities transferred; Colorado. A transfer of securities to a minor pursuant to a Colorado statute which requires the securities to be registered in the name of the donor, the name of any adult member of the minor's family, or the minor's guardian as custodian or, in the case of bearer securities, the delivery to an adult member of the minor's family other than the donor, as custodian, accompanied by a deed of gift, constitutes a completed gift at the time the transfer was made. Such gifts qualify for the annual exclusion. (Sec. 2503, '54 Code.)

Rev. Rul. 56-86, 1956-1 C.B. 449.

232.9 Support and maintenance. Taxpayer made gifts to trusts created for the benefit of his minor grandchildren. The terms of the trusts provided that the net income therefrom should be paid to the grandchildren's lawful guardian for their education, maintenance, and support until their attaining the age of 21. It was also provided that any and all such net income not so paid over any year during the grandchildren's minority should be invested and reinvested in the manner provided for the principal of the trusts. *Held*, the trustee could not exercise discretion but was required to pay over the entire income to the beneficiaries; therefore, the gifts were not gifts of future interest and qualify for the annual exclusion. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Edward J. Kelly, 19 T.C. 27, Acq., 1953-1 C.B. 5.

232.10 Support and maintenance. The taxpayer made gifts of checks and bonds which he transferred to the parents of his minor grandchildren in trust for the benefit of the grandchildren, but he did not create formal trusts. The gifts were deposited in bank accounts designated in the same manner. Taxpayer subsequently testified that he intended the funds to be used for the grandchildren's support and maintenance and for their exclusive benefit. *Held*, the transfers were present interests entitled to the annual exclusion. (Sec. 2503, '54 Code.)

Morris M. Messing, 48 T.C. 502, Acq., 1968–1 C.B. 2.

232.11 Support and maintenance; accumulation of unused income. One-third of the income from an irrevocable trust was to be used for the health, comfort, maintenance, and education of a mentally retarded minor. Any unused income was to be accumulated in a reserve fund for needs in later years. *Held*, the annual exclusion was allowable, since the language of the trust instrument showed that a steady flow of an ascertainable portion of the income to the minor would be required. (Sec. 2503, '54 Code.)

Elise McK. Morgan, 42 T.C. 1080, Acq., 1966–2 C.B. 6.

232.12 Transfer in trust; guardian not appointed. A gift in trust for the benefit of a minor beneficiary without appointment of a legal guardian, with use of the principal and income for the benefit of the minor discretionary with the trustee, is a gift of a present interest that qualifies for the annual exclusion provided there is no impediment under the trust or local law to the appointment of a guardian and the minor has a right to demand distribution. Rev. Rul. 54-91 revoked.§25.2503-2. (Sec. 2503, '54 Code.)

Rev. Rul. 73-405, 1973-2 C.B. 321.

232.13 Transfer of property without limitation. A gift to a minor is not a gift of a future interest unless some limitations are placed by the donor upon the possession or enjoyment.§86.11. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 54-400, 1954-2 C.B. 319.

232.14 Trustee as guardian. A gift in trust for a minor under terms requiring the trustee to use the property for the benefit of the donee as if held by him as guardian of the donee constitutes a gift of a present interest and is, therefore, entitled to the annual exclusion. Rev. Rul. 54-91 distinguished.§86.10. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 59-78, 1959-1 C.B. 690.

232.15 Trustee's discretionary power. Taxpayer made gifts to a trust created for the benefit of her minor son. The trustee was to apply and pay over the trust income to the use and for the benefit of the son during his minority, with discretionary power to make payments thereof to the child's mother, or guardian of his property, or other person or corporation designated by the donor, or by expending it in such manner as would benefit the child. Any balance of income was to be accumulated and paid over to the son at his reaching majority. *Held*, even though the trustee had discretionary power as to whom payments would be made he had no discretion to determine if he would or would not pay over the income. The gifts were not gifts of future interest and, therefore, qualify for the annual exclusion. (Sec. 504(b), Rev. Act of 1932; Sec. 2503, '54 Code.)

Madeleine N. Sharp, 3 T.C. 1062, Acq., 1953–1 C.B. 6.

232.16 Trustee's discretionary power. A trustee's discretionary power to use principal and income for "support, care, education, comfort and welfare" of a donee during his minority satisfied the requirement of section 2503(c) of the Code that the transferred property be expendable for the benefit of the donee prior to his attaining the age of 21.§25.2503-4. (Sec. 2503, '54 Code.)

Rev. Rul. 67-270, 1967-2 C.B. 349.

232.17 Trustee's power restricted. The annual exclusion is not allowable for a transfer of property in trust under terms restricting the trustee's power to expend trust property for the benefit of the minor beneficiary only if his needs cannot be met by his parents or from his own financial resources.§25.2503-4. (Sec. 2503, '54 Code.)

Rev. Rul. 69-345, 1969-1 C.B. 226.

232.18 Unborn child; property transferred in trust. Where property is transferred in trust for the benefit of an unborn child, the transfer is not considered to be a gift of a present interest qualifying for the annual exclusion.§25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 67-384, 1967-2 C.B. 348.

232.19 Uniform Gifts to Minors Act. A transfer of property to a minor under statutes patterned after either the Model Gifts of Securities to Minors Act or the Uniform Gifts to Minors Act constitutes a completed gift at the time the transfer was made and such a gift qualifies for the annual exclusion.§25.2503-4. (Sec. 2503, '54 Code.)

Rev. Rul. 59-357, 1959-2 C.B. 212.

232.20 Uniform Gifts to Minors Act; age of majority lowered by State. The allowance of the annual exclusion under section 2503(b) of the Code is not affected by the amendment of a State's Uniform Gifts to Minors Law lowering the age of majority and thus requiring that property be distributed to a minor donee at age 18.§25.2503-4. (Sec. 2503, '54 Code.)

Rev. Rul. 73-287, 1973-2 C.B. 321.

Nonresidents

234.1 British for Hawaiian realty. Taxpayer, a British citizen, resident of Hawaii, purchased property located in Hawaii from his father, a subject and resident of England. Prior to execution of the agreement, requiring a cash down payment and a note secured by a mortgage on the property, the father deposited an amount equal to the down payment in his son's bank account in England and this money was used for the down payment. Subsequent to their agreement, the father made unrestricted cash deposits to his son's bank account in England which were used to pay the mortgage note. *Held*, to the extent of the down payment there was a gift of real property situated within the U.S. subject to the gift tax. The subsequent cash transfers were no more than cash gifts of funds which took place in Britain, and not subject to gift tax. (Secs. 1000, 1002, '39 Code; Secs. 2511, 2512, '54 Code.)

Geoffrey C. Davies, 40 T.C. 525, Acq. in result, 1966–1 C.B. 2.

234.2 Citizens; marriage to foreign subject. A native born U.S. citizen who as a result of her marriage to a British subject lost her citizenship under section 3 of the Expatriation Act of 1907, which under current law would be declared unconstitutional, is and always has been a U.S. citizen subject to the gift tax and estate tax provisions of the Code. This ruling is not applicable for taxable years beginning prior to January 1, 1976, or to estates of decedents dying before that date, except where such individuals exercised a specific right of citizenship. §§25.2501-1, 25.2511-1, 301.7805-1. (Secs. 1, 871, 877, 2001, 2051, 2101, 2106, 2107, 2501, 2511, 7805; '54 Code.)

Rev. Rul. 75-357, 1975-2 C.B. 5.

234.3 Stock of domestic corporation. A gift of stock of a domestic corporation by a nonresident alien is not taxable unless he was engaged in business in the U.S. during the calendar year in which the gift was made. (Secs. 2501, 2511; '54 Code.)

Rev. Rul. 56-438, 1956-2 C.B. 604.

Notes
(See: Securities)

Offers in compromise
(See: ADMINISTRATIVE)

Officers and employees of the Service

(See: ADMINISTRATIVE)

Overassessments

(See: ADMINISTRATIVE: Refunds and credits)

Overpayments

(See: ADMINISTRATIVE)

Payment of tax

(See: ADMINISTRATIVE)

Penalties

(See: ADMINISTRATIVE)

Period of limitation

(See: ADMINISTRATIVE: Limitation period)

Powers of appointment

236.1 General; inter vivos trust; minor decedent-beneficiary. A minor decedent-beneficiary of an inter vivos trust created by a gift of a present interest, who died without having exercised the testamentary power of appointment granted under the trust possessed a general power of appointment at the time of death even though under local law the minor was legally incompetent to execute a will at the time of death, and the value of the trust assets at the date of death is includible in the minor's gross estate. §§20.2041–3, 25.2503–4. (Secs. 2041, 2503; '54 Code.)

Rev. Rul. 75–351, 1975–2 C.B. 368.

236.2 Release; trust remainder. The decedent executed a trust agreement in 1919 wherein she reserved to herself the income from the trust for life and the right to appoint by will the distribution of the trust corpus after her death. The trust was irrevocable under local law. She irrevocably released this power of appointment in 1942. *Held*, the release of the general testamentary power of appointment in 1942 did not give rise to a taxable gift of the remainder value of the trust corpus. (Sec. 1000(e), '39 Code; Sec. 2514, '54 Code.)

Ellie G. Canfield, 34 T.C. 978, Acq., 1963–1 C.B. 3.

236.3 Release; trustee-income beneficiary; Washington State. The release by the trustee-income beneficiary of the power to consume, invade or appropriate the corpus of a testamentary trust for the beneficiary's health care, maintenance, and enjoyment is, under the law of the State of Washington, the exercise of a general power of appointment and is a transfer of property for gift tax purposes. §25.2514–1. (Sec. 2514, '54 Code.)

Rev. Rul. 76–547, 1976–2 C.B. 302.

236.4 Release; trust remainder. In December 1930, decedent transferred securities to her husband. In restitution thereof, he created two trusts on March 10 and 17, 1931, under which decedent was given the life income plus general testamentary powers of appointment over the corpora subject to the proviso that in default of such appointment, the property would be distributed to her intestate heirs. In 1943, decedent released her powers. *Held*, the release of the general testamentary powers of appointment in 1943 did not give rise to a taxable gift since decedent did not have power to revest title to the trust corpora in herself during her lifetime. (Sec. 1000(e), '39 Code; Sec. 2514, '54 Code.)

Dora N. Marshall, 51 T.C. 696, Nonacq., 1969–2 C.B. xxvi.

236.5 Release of general power after shift in value of trust assets. Acquiescence in a recapitalization of closely held stock in a trust is a transfer by the trust beneficiary subject to the gift tax, where the recapitalization results in a shift in the beneficiary's interest by decreasing the value of the remainder interest over which the beneficiary has a general power of appointment. §§20.2036–1, 20.2041–3, 25.2511–1, 25.2514–1. (Secs. 2036, 2041, 2511, 2514; '54 Code.)

Rev. Rul 86–39, 1986–11 I.R.B. 23.

236.6 Renounced bequest appointed by legatee. The renunciation of a testamentary bequest by the legatee and the exercise of a special power of appointment under the will, as permitted under state law, to appoint the bequest to certain individuals in the classes of persons indicated in the decedent's will results in a taxable gift. §25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 76–156, 1976–1 C.B. 292.

236.7 Trust; "Crummey" powers; relinquishment of withdrawal powers. Multiple or successive "Crummey" withdrawal powers possessed by a sole beneficiary of one trust or possessed by the beneficiary under the provisions of more than one trust are similarly required to be aggregated for purposes of the annual gift tax exemption. §25.2514–3. (Sec. 2514, '54 Code.)

Rev. Rul. 85–88, 1985–26 I.R.B. 5.

236.8 Trust; relinquishment of income interest. A testamentary trust gave an individual a lifetime income interest in the trust property with the power to appoint all or part of the trust property during lifetime to one or more of the individual's children. The exercise of the power results in a gift under section 2511 equal to the value of the lifetime income interest at the time of the gift. §§2511–1, 25.2514–1. (Secs. 2511, 2514; '54 Code.)

Rev. Rul. 79–327, 1979–2 C.B. 342.

236.9 Trust; relinquishment of income interest. The gift tax consequences are shown of a situation in which the sole trustee of a trust, who has the discretionary power to receive or accumulate trust income, names the remaindermen and a corporation as cotrustees, and retains and subsequently releases interests in the trust. §§25.2511–2, 25.2512–9, 25.2514–3. (Secs. 2511, 2512, 2514; '54 Code.)

Rev. Rul. 79–421, 1979–2 C.B. 347.

236.10 Trust; revocation power held by grantor. Under the terms of a transfer in trust the right to revoke is subject to a condition which can be accomplished through the exercise of an act within the control of the grantor. *Held*, the transfer constitutes an incomplete gift inasmuch as the grantor possesses the power to revest the beneficial title to the property in himself.§86.3. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 54–537, 1954–2 C.B. 316.

Powers of attorney

(See: ADMINISTRATIVE: Attorneys and agents)

Practice before the Service

(See: ADMINISTRATIVE: Attorneys and agents)

Present interests

(See: Property: Interests)

Property

Interests

238.1 Cash value of insurance. The irrevocable assignment of the cash surrender value of a life insurance policy to a college by a donor who retains the right to designate the benificiary and to assign the balance of the policy, whether the policy is paid-up and the college is given possession or the policy is nonpaid-up and the donor retains possession, is a gift of neither the donor's entire interest in the policy nor an undivided portion of that interest, and no gift tax charitable deduction is allowed.§25.2522(c)–3. (Sec. 2522, '54 Code.)

Rev. Rul. 76–200, 1976–1 C.B. 308.

238.2 Disclaimer; joint tenancy. A joint tenant's renunciation of an interest in property acquired by survivorship is not a qualified disclaimer for purposes of section 2518 if the survivor originally transferred the property to the joint tenancy. (Sec. 2518, '54 Code.)

Rev. Rul. 83–35, 1983–1 C.B. 234.

238.3 Dower interest not relinquished. The failure of the wife to relinquish her dower interest in a parcel of real estate given by the taxpayer to his children as tenants in common in which the wife neither joined in the execution of the deed nor relinquished her inchoate dower interest in the property will have no effect in determining the value of the property. (Sec. 2512, '54 Code.)

Rev. Rul. 58–13, 1958–1 C.B. 342.

238.4 Future; exclusion of trust remainder. The gift of a fractional remainder interest in a trust to a donee who already enjoys a present income interest in the same fractional portion of the trust from a donor who intends that the donee await termination of the trust to enjoy the remainder interest, in a state whose law provides that such a trust will continue where no merger is intended by the donor, is a gift of a future interest that does not qualify for the annual exclusion. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 78–272, 1978–2 C.B. 247.

238.5 Future; extension of trust term. The extension of the income interest in a trust, made one year after the creation of a trust that provided an income interest in the adult donee for a 5-year period, is the gift of a future interest for which the annual exclusion is not allowable. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 76–179, 1976–1 C.B. 290.

238.6 Future; gift to corporation; spouse stockholder. A transfer of property to a corporation of which the donor's spouse is a stockholder is a gift of a future interest to its stockholders, and does not qualify for the $3,000 per donee annual exclusion. The portion of the transfer equal to the wife's proportionate interest in the corporation qualifies for the marital deduction.§§25.2503–3, 25.2523(a)–1. (Secs. 2503, 2523; '54 Code.)

Rev. Rul. 71–443, 1971–2 C.B. 337.

238.7 Future; premiums on life insurance policies held in trust. A company paid life insurance premiums on behalf of an employee who assigned the policy to an irrevocable trust with the requirement that the trustee retain the proceeds and pay income from the proceeds periodically to the trust beneficiaries after the employee's death. Neither the employee nor the trust had a contractual right to require the employer to maintain the policy. The present payment of premiums is a gift by the employee of a future interest and does not qualify for the annual exclusion under section 2503(b). §25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 79-47, 1979-1 C.B. 312.

238.8 Future; qualifying act by donee. The $3,000 annual exclusion is not allowable for a gift of one-third of the income from property, transfered to a 10-year and 3-month trust, commencing at the earlier of three years from the trust creation or the donee's termination of full-time student enrollment in an institution of higher learning. §25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 75-415, 1975-2 C.B. 374.

238.9 Future; spendthrift trust. A gift of the present right to enjoy the income from a trust for a period of years or for life is not a gift of a future interest solely because of the inclusion in the trust instrument of a provision or clause which prohibits the income beneficiary from alienating, assigning or otherwise anticipating such income.§86.11. (Sec. 1003, '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 54-344, 1954-2 C.B. 319.

238.10 Future; stock subject to transfer restrictions. Gifts of nonincome-producing stock, received by the donor pursuant to a statutory merger and subject to a transfer restriction agreement prohibiting the stock from being offered, sold, pledged, or otherwise disposed of for a period of two years, does not transfer the immediate use, possession, or enjoyment of the donees and fails to qualify for either the gift tax annual exclusion or the annual exclusion with respect to an income interest. §25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 76-360, 1976-2 C.B. 298.

238.11 Future; tenancy by the entirety; North Carolina. The interest of a wife in real property conveyed as a gift to her and her husband as tenants by the entirety in North Carolina, where the wife is excluded from any right to the use or income from property during the existence of such tenancy, is not a present interest and does not qualify for the $3,000 annual exclusion. §25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 75-8, 1975-1 C.B. 648.

238.12 Future; tenancy by the entirety; Tennessee. The interest of a wife in property transferred as a gift to her and her husband as tenants by the entirety in Tennessee qualifies as a present interest for purposes of the annual exclusion under section 2503(b). Rev. Rul. 74-345 revoked. §25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 79-54, 1979-1 C.B. 313.

238.13 Future; transfer to minor without limitation. A gift to a minor is not a gift of a future interest unless some limitations are placed by the donor upon the possession or enjoyment.§86.11. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 54-400, 1954-2 C.B. 319.

238.14 Future; trust remainder merged with present interest. The gift of a remainder interest in personal property held in trust to a donee who is an income beneficiary of the trust, in a state whose law provides that such an income interest and remainder interest in the same individual merge and the trust terminates with respect to that interest, is a gift of a present interest that qualifies for the annual exclusion.§25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 78-168, 1978-1 C.B. 298.

238.15 Future; trust remainder transferred to spouse. A gift to a spouse of a vested indefeasible remainder interest in a trust such as would be includible in her gross estate in the event she should die during the 12-year period of the trust qualifies for the gift tax marital deduction.§86.16(a). (Sec. 1004, '39 Code; Sec. 2523, '54 Code.)

Rev. Rul. 54-470, 1954-2 C.B. 320.

238.16 Future; vested remainder under a will. *A* acquired a vested remainder interest under a will of his father, subject only to a life estate of his mother. *A* conveys his remainder interest to his son absolutely and in fee simple. *Held,* the gift of the remainder interest to the son is a gift of a future interest.§86.11. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 54-401, 1954-2 C.B. 320.

238.17 Insurance proceeds; simultaneous deaths of spouses. An individual who owned an insurance policy on his spouse's life naming the trustee of a living trust as beneficiary, and who pursuant to local law was presumed to have survived his spouse when they died simultaneously, is deemed to have made a gift of the insurance proceeds to the trustee subject to the provisions of section 2501 and such proceeds are also includible in his gross estate under section 2036. §§20.2036-1, 25.2511-1. (Secs. 2036, 2511; '54 Code.)

Rev. Rul. 77-48, 1977-1 C.B. 292.

238.18 Jointly-held; payments by one cotenant. An individual who provides the funds for the down payment for a purchase of real property and has title conveyed to the joint ownership, with rights of survivorship, of the individual and the individual's two children, any of whom under local law may unilaterally sever his or her interest, has made taxable gifts of one-third interests to each of the children, valued at one-third of the down payment. The individual's subsequent payments without expectation of reimbursement of the total amounts due monthly on the mortgage are also gifts, each equal to one-third of each payment. §§25.2511-1, 25.2512-8. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 78-362, 1978-2 C.B. 248.

238.19 Present; death benefit. An employee entered into an employment contract in which the employer agreed to pay a death benefit of twice the annual salary at the time of death to the employee's surviving spouse, but only if the employee was still employed at the time of death. The death benefit was not funded. The employee made a gift of a present interest in the quarter in which death occurred—the time when the value of the death benefit became ascertainable—and the gift qualifies for the annual exclusion allowable under section 2503(b). §§25.2503-2, 25.2511-1, 25.2512-1. (Secs. 2503, 2511, 2512; '54 Code.)

Rev. Rul. 81-31, 1981-1 C.B. 475.

238.20 Present; life insurance policies. Where a policy of insurance, which grants to the owner the usual incidents of ownership, including the right to change the beneficiary and the right to surrender the policy for its cash value, if any, is transferred or assigned to a donee as absolute owner, and the donee, or his guardian, is not restricted in any manner from exercising all legal incidents of ownership in the policy by prior endorsement or otherwise, a gift of the policy and subsequent payment of premiums thereon by the donor will constitute gifts of present interests.§86.11. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 55-408, 1955-1 C.B. 113.

238.21 Present; parents as guardians of donees. The taxpayers made gifts of stock to their minor grandchildren under guardianship. The language of the instrument making the gift authorized, but did not require, the guardian to expend the donated property or the income therefrom for the donee's support, maintenance and education. The parents of the donees were the guardians. Under state law parents of minors were prevented from using the estates of the minor children or the income therefrom for the support of the minors where the parents were financially able to support the minors. *Held,* the gifts to the grandchildren were gifts of present interests. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Beatrice B. Briggs, 34 T.C. 1132, Acq., 1961-1 C.B. 4.

238.22 Present; premiums on life insurance policies held in trust. Under the terms of a trust instrument, the taxpayer paid certain amounts to the trustees to be applied toward the payment of the premiums on the life insurance policies held in trust for the benefit of the taxpayer's wife. *Held,* the taxpayer intended to give his wife a present interest right to the trust principal, which included the insurance policies; thus, the amounts paid by the taxpayer are eligible for the annual exclusion. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Harbeck Halsted, 28 T.C. 1069, Acq., 1958-2 C.B. 5.

238.23 Present; premiums on life insurance policies held in trust. Life insurance premiums voluntarily paid by an employer with respect to a group term policy held by an irrevocable trust created by an employee are subject to tax as indirect transfers by the employee and qualify as a gift of a present interest for purposes of the annual $3,000 exclusion. §§25.2503-3, 25.2511-1. (Secs. 2503, 2511; '54 Code.)

Rev. Rul. 76-490, 1976-2 C.B. 300.

238.24 Present; trust principal subject to encroachment. The donor created a trust giving trust income to certain beneficiaries, otherwise well provided for, for life with the remainder to others. The trustees had the power to encroach upon the principal to provide for the beneficiaries under stated circumstances. The grantor's intention was that the trustees should consider the beneficiaries' other available resources in determining the need for any encroachment. *Held,* the power to encroach was limited by an ascertainable standard and the possibility of encroachment was remote. Consequently, the value of the income interests was susceptible of determination and gift tax exclusions were allowed. (Sec. 1003(b), '39 Code; Sec 2503, '54 Code.)

William H. Robertson, 26 T.C. 246, Acq., 1956-2 C.B. 8; Hugh McK. Jones, 29 T.C. 200, Acq., 1958-2 C.B. 6.

238.25 Present; trust remainder transfered to beneficiaries. A gift by the creator of four Clifford trusts of his right to receive a portion of the principal from the trusts upon their termination to the beneficiaries of the trusts is the gift of a present interest qualifying for the annual $3,000 exclusion. (Sec. 2503, '54 Code.)

Arthur W. Clark, 65 T.C. 126, Acq., 1977-1 C.B. 1.

238.26 Present; valuation. During 1952 and 1953, the taxpayers made gifts in trusts of shares of common stock. The trust provided that the trustee may, at any time, with the consent of the then living children of the donors, who were the beneficiaries, distribute all or any part of the trust corpus to the children or their heirs. *Held,* the value of gifts of the present interests in the trust income could be ascertained with reasonable accuracy. (Sec. 1003, '39 Code; Sec. 2503, '54 Code.)

J. J. Newlin, 31 T.C. 451, Acq., 1960-2 C.B. 6

238.27 Present v. future; power to demand trust corpus. A trust provision that gives a legally competent adult beneficiary the power to demand corpus does not qualify a transfer to the trust as a present interest eligible for the gift tax annual exclusion, if due to the donor's conduct, the beneficiary lacks knowledge of the power and does not have a reasonable opportunity to exercise it before it lapses. Distinguished by Rev. Rul. 83–107 §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 81–7, 1981–1 C.B. 474.

238.28 Present v. future; power to demand trust corpus. The grant, to a trust beneficiary, of a power to withdraw from trust corpus is a present interest eligible for the annual exclusion under section 2305(b) in the year of the transfer to the trust, even though the beneficiary was not informed of the existence of the power until the following calendar year. Rev. Rul. 81–7 distinguished. §25.2503–3. (Sec. 2503, "54 Code.)

Rev. Rul. 83–108, 1983–2 C.B. 167.

238.29 Present v. future; share in trust corpus. A gift of a right to demand and receive at least a pro rata portion of trust corpus conveyed to several donees is a gift of a present interest to the extent of each donee's pro rata portion, and the annual exclusion under section 2503 is allowable. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 80–261, 1980–2 C.B. 279.

238.30 Present v. future; share in trust income. Gifts of the right to share in trust corpus upon a grantor's death are gifts of future interests and do not qualify for the annual exclusion. However, although after-born members of a class share in trust income, the exclusion will be allowed to the extent it can be shown that there is a severable present interest which has some ascertainable value. (Sec. 2503, '54 Code.)

Rev. Rul. 55–678, 1955–2 C.B. 389.

238.31 Terminable; U.S. savings bonds. Gifts of U.S. savings bonds Series E and G, registered in the name of a donee spouse and payable on her death to the donor are terminable interests. Accordingly, no portion of the value of such bonds qualifies for the marital deduction. §86.16(b). (Sec. 1004, '39 Code; Sec. 2523, '54 Code.)

Rev. Rul. 54–410, 1954–2 C.B. 321.

238.32 Transfers; exclusions; completed gifts. Transfers by a donor of specified portions of real property equal in value to the annual gift tax exclusion allowable for the years of the transfer constitute completed gifts each year of the portions transferred, and each gift qualifies for the annual exclusion under section 2503. §§25.2501–1, 25.2503–3, 25.2511–2. (Secs. 2501, 2503, 2511; '54 Code.)

Rev. Rul. 83–180, 1983–2 C.B. 169.

238.33 Transfers; real property; exclusions; adjustment based on Service's valuation. The value of a gift will be determined without regard to an adjustment clause that provides for the recharacterization depending on the Service's valuation of the property. §§25.2501–1, 25.2503–3, 25.2511–2. (Secs. 2501, 2503, 2511; '54 Code.)

Rev. Rul. 86–41, 1986–12 I.R.B. 9.

238.34 Trust income; beneficiaries and survivor. A gift to an irrevocable trust, the principal of which is divided into two equal shares, the net income from which is payable to separate beneficiaries for life with the total of the income payable to the survivor, constitutes a gift to each beneficiary of a present interest in the income from his trust share, for which the annual exclusion is allowable, and a gift of a future interest to the survivor, for which no exclusion is allowable. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 75–506, 1975–2 C.B. 375.

238.35 Trust; absolute discretion in trustees. The taxpayer transferred securities in trust and directed that the net income be paid in monthly installments to certain individuals for life. Upon the death of the last surviving income beneficiary the corpus was to be paid over to a charitable organization. The trust instrument provided that dividends, rents, interest and similar payments were normally to be treated as income, however, the trustees were authorized, in their absolute discretion, to allocate all or any part of such payment to principal. *Held,* the taxpayer intended to give the income beneficiaries a substantial present interest and did not intend to favor the remainderman to the detriment of the income beneficiaries. (Sec. 1003, '39 Code; Sec. 2503, '54 Code.)

Frances Carroll Brown, 30 T.C. 831, Acq. in result, 1959–2 C.B. 4.

238.36 Trust; beneficiaries' present interests at least $3,000. Where it can be demonstrated that the value of the present interest of each beneficiary in the income from a trust established for a term of years will equal $3,000, the annual exclusion is allowable, although the number of eventual donees is not ascertainable or the present interest of each beneficiary is not susceptible of valuation. (Sec. 2503, '54 Code.)

Rev. Rul. 55–679, 1955–2 C.B. 390.

238.37 Trust; contingent gift to charity. Where the remainder interest which charity may receive under the terms of an irrevocable inter vivos trust is based upon the contingency that the life tenants, aged 40 and 50 years on the date of gift, die without being survived by issue, no deduction may be allowed in respect of the charitable interest under section 2522 of the 1954 Code.§86.13. (Sec. 1004, '39 Code; Sec. 2522, '54 Code.)

Rev. Rul. 55–483, 1955–2 C.B. 391.

238.38 Trust; discretion of minor-beneficiary to compel corpus distribution. A gift to a minor under a trust that confers on its beneficiary upon reaching age 21 the right to compel immediate distribution of the corpus by written notice to the trustee that is either (1) a continuing right to compel immediate distribution or to permit the trust to continue by its own terms or (2) a right to compel immediate distribution for a limited period that, if not exercised, will permit the trust to continue by its own terms is not a gift of a future interest and qualifies for the annual exclusion. Rev. Rul. 60–218 revoked.§25.2503–4. (Sec. 2503, '54 Code.)

Rev. Rul. 74–43, 1974–1 C.B. 285; Martha J. Heidrich, 55 T.C. 746, Acq., 1974–1 C.B. 2.

238.39 Trust; discretion to allocate income. The annual exclusion does not apply to a gift in trust where the trustee has discretion to allocate income among the beneficiaries.§86.10. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 55–303, 1955–1 C.B. 471.

238.40 Trust; discretion to distribute principal. The annual exclusion does not apply to a gift in trust where the instrument provides for the distribution of income to a designated beneficiary but gives the trustee the uncontrolled discretion to determine whether or not to distribute principal.§86.10. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 54–92, 1954–1 C.B. 207.

238.41 Trust; guardian not appointed for minor donee. A gift in trust for the benefit of a minor beneficiary without appointment of a legal guardian, with use of the principal and income for the benefit of the minor discretionary with the trustee, is a gift of a present interest that qualifies for the annual exclusion provided there is no impediment under the trust or local law to the appointment of a guardian and the minor has a right to demand distributions. Rev. Rul. 54–91 revoked.§25.2503–2. (Sec. 2503, '54 Code.)

Rev. Rul. 73–405, 1973–2 C.B. 321.

238.42 Trust; income interest; minor beneficiary. Income from a trust for a minor child was to be accumulated or expended for the child's benefit at the trustee's discretion prior to the child reaching age 21, and was to be paid to the child at least annually thereafter. The income interest during the child's minority qualified as a present interest solely by reason of section 2503(c). *Held,* that income interest and the income interest for the period after the child's reaching age 21 constitute a single present interest qualifying for the annual exclusion. (Sec. 2503, '54 Code.)

David H. Levine, 63 T.C. 136, Nonacq., 1978–2 C.B. 3.

238.43 Trust; income interest; value not ascertainable. The value of an income interest in a trust, whose governing instrument provides that all gains and losses from the sale of trust assets are to be credited or charged to income, is not an ascertainable present interest in property and does not qualify for the annual exclusion.§25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 77–358, 1977–2 C.B. 342.

238.44 Trust; investments in nonincome-producing property and life insurance. The annual exclusion is not allowable for a gift of property in trust which provides that all income must be paid the beneficiary but permits corpus to be invested in nonincome-producing property and life insurance.§25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 69–344, 1969–1 C.B. 225.

238.45 Trust; reversionary. Upon the creation of an irrevocable, reversionary trust, the income of which is for the benefit of individuals other than the grantor, and which terminates more than ten years from the creation of the trust or upon the earlier deaths of the beneficiaries, the value of the gift is measured by the value of the property transferred minus the value of the retained interest actuarially computed. Also, the gift constitutes a gift of a present interest for purposes of the $3,000 exclusion.§86.19(f). (Sec. 1005, '39 Code; Secs. 2503, 2512, '54 Code.)

Rev. Rul. 58–242, 1958–1 C.B. 251.

238.46 Trust; reversionary. Certain broad discretionary powers relating to distributions and investments that were granted to the trustee of two irrevocable trusts, the governing instruments of which provided that all the income from one was payable at least annually to the grantor's father and the income from the other to the grantor's mother and that the principal of each was to revert to the grantor upon the death of the respective beneficiary did not prevent the value of the beneficiaries' income interests in the gifts from being presently ascertainable, and the donor was, therefore, entitled to the $3,000 per donee exclusion and to have the value of the reversionary interests excluded cluded from the taxable gifts. (Secs. 2503, 2512; '54 Code.)

Cherlyn C. Caldwell Martinez, 67 T.C. 60, Acq. in result, 1977–2 C.B. 1.

238.47 Trust; right to invade corpus for "comfort" of donor. The decedent established a trust with corporate and individual trustees. She retained a life interest therein with the individual trustees as remaindermen. The corporate trustee had the power to invade the corpus for her "comfort". *Held,* no completed gift of the remainder interest resulted from the transfer in trust. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Christianna K. Gramm, 17 T.C. 1063, Acq., 1962–1 C.B. 2.

238.48 Trust; trustee as guardian for minor donee. A gift in trust for a minor under terms requiring the trustee to use the property for the benefit of the donee as if held by him as guardian of the donee constitutes a gift of a present interest and is, therefore, entitled to the annual exclusion. Rev. Rul. 54-91 distinguished. §86.10. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 59-78, 1959-1 C.B. 690.

238.49 Undivided portion; transfers. Application of section 2522(c) of the Code to deductions for gifts made after July 1969 and before October 4, 1972 where the interest transferred is an undivided portion of a donor's entire interest in property.§25.2522(c)-3. (Sec. 601.105, S.P.R.; Sec. 2522, '54 Code.)

Rev. Proc. 72-45, 1972-2 C.B. 826.

Valuation
(See: Valuation)

Publicity of information
(See: ADMINISTRATIVE)

Rates of tax
(See: ADMINISTRATIVE)

Records
(See: ADMINISTRATIVE: Books and records)

Refunds and credits
(See: ADMINISTRATIVE)

Remainder interests
(See: Property: Interests; Trusts)

Reproduction of forms and returns
(See: ADMINISTRATIVE: Forms)

Returns
(See: ADMINISTRATIVE)

Rulings
(See: ADMINISTRATIVE)

Securities

246.1 Australian convention. Where a donor, a citizen and resident of the U.S., made a gift of securities which are deemed to be situated in Australia, under Article III(1)(d) of the U.S.—Australia gift tax convention, and the Commonwealth gift duty imposed by Australia with respect to the gift exceeds the Federal gift tax imposed by the U.S., under paragraph (1) of Article V of the convention a credit against the Federal gift tax is allowable for the full amount of the Federal gift tax imposed.

Rev. Rul. 66-119, 1966-1 C.B. 359.

246.2 Domestic corporation; transfer by nonresident alien. A gift of stock of a domestic corporation by a nonresident alien is not taxable unless he was engaged in business in the U.S. during the calendar year in which the gift was made. (Secs. 2501, 2511; '54 Code.)

Rev. Rul. 56-438, 1956-2 C.B. 604.

246.3 Joint brokerage account. The creator and sole contributor of a joint brokerage account with securities registered in the name of the nominee of the firm does not make a gift to the other joint owner unless and until the other joint owner draws on the account for his own benefit.§25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 69-148, 1969-1 C.B. 226.

246.4 Joint names; husband and wife. The wife of the decedent agreed to and did assist him in his various business activities throughout their married life. In order to effectuate an oral agreement that whatever was earned or accumulated with the joint efforts of his wife subsequent to their marriage was to belong to them jointly, the decedent transferred individually held securities to and purchased securities in their joint names. *Held*, the purchases and transfers were for an adequate consideration and the decedent did not make gifts to his wife when he transferred securities to and purchased securities in their joint names. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Charles A. Trafton, 27 T.C. 610, Acq., 1957-2 C.B. 7.

246.5 Mean selling price. Listed securities and Treasury bonds must be valued and reported in dollar fractions smaller than eighths or thirty-seconds respectively, if the mean selling price on the applicable valuation date results in a smaller fraction.§§20.2031-2, 25.2512-2. (Secs. 2031, 2512; '54 Code.)

Rev. Rul. 68-272, 1968-1 C.B. 394.

246.6 Retention of right to dividends out of earnings or capital. With a view toward restricting ownership of stock in a family corporation to members of the family, the taxpayers entered into an agreement reserving to each a life interest in the stock then owned by him, with provisions for devolution of the remainder in the stock, after death, to his children or descendants, or, in the absence of children or descendants, to the other parties to the agreement. They reserved the right to receive all dividends in money whether paid out of earning or capital. *Held*, the agreement did not result in a completed transaction subject to gift tax. (Sec. 501, Rev. Act of 1932; Sec. 2501, '54 Code.)

Marjorie M. Merritt, 29 T.C. 149, Acq., 1958-2 C.B. 6.

246.7 Stock transfer; valuation date. The date on which stock is transferred on the books of a corporation is the date of gift where a donor endorses the certificate and delivers it to his bank or broker with directions for effecting the transfer to a donee. Such date governs, therefore, in the determination of the fair market value of the stock.§§86.3, 86.19. (Secs. 1000, 1005; '39 Code; Secs. 2511, 2512, '54 Code.)

Rev. Rul. 54-135, 1954-1 C.B. 205.

246.8 Stock transfer; valuation date. The date a properly endorsed certificate of stock is delivered to the donee by the donor is the date for determining fair market value of the gift, even though the transfer is not recorded on the corporation's books until some later date.§§86.3, 86.19. (Secs. 1000, 1005, '39 Code; Secs. 2511, 2512, '54 Code.)

Rev. Rul. 54-554, 1954-2 C.B. 317.

246.9 Stock transferred to corporate employees by controlling shareholders. The transfer of a corporation's stock by the corporation's two shareholders to three employees for a valid business reason, to retain valuable employees, is made for adequate and full consideration and is not subject to the gift tax. §§25.2511-1, 25.2512-8. (Secs. 61, 83, 1012, 2511, 2512; '54 Code.)

Rev. Rul. 80-196, 1980-2 C.B. 32.

246.10 Transfer to minor; Colorado. A transfer of securities to a minor pursuant to a Colorado statute which requires the securities to be registered in the name of the donor, the name of any adult member of the minor's family, or the minor's guardian as custodian or, in the case of bearer securities, the delivery to an adult member of the minor's family other than the donor, as custodian, accompanied by a deed of gift, constitutes a completed gift at the time the transfer was made. Such gifts qualify for the annual exclusion. (Sec. 2503, '54 Code.)

Rev. Rul. 56-86, 1956-1 C.B. 449.

246.11 U.S. savings bonds. The estate and gift tax status of U.S. savings bonds that are purchased wholly or partly by an individual and registered in several authorized forms is restated. Mim. 5202 superseded.§§20.2033-1, 20.2035-1, 20.2040-1, 25.2511-1. (Secs. 2033, 2035, 2040, 2511; '54 Code.)

Rev. Rul. 68-269, 1968-1 C.B. 399.

246.12 U.S. savings bonds; terminable interest. Gifts of U.S. savings bonds Series E and G, registered in the name of a donee spouse and payable on her death to the donor, are terminable interests. Accordingly, no portion of the value of such bonds qualifies for the gift tax marital deduction.§86.16(b). (Sec. 1004, '39 Code; Sec. 2523, '54 Code.)

Rev. Rul. 54-410, 1954-2 C.B. 321.

246.13 U.S. savings bonds; transfers between coowners. Series E U.S. savings bonds registered in the names of *A* and *B* as coowners were later reissued in the name of *B* alone in order to effect a gift to him. The redemption value of the bonds at the time reissued is the proper value to be used by *A* for gift tax purposes, and accrued interest on the bonds before their reissue is includible in *A's* gross income for income tax purposes.§86.19. (Sec. 1005, '39 Code; Sec. 2512, '54 Code.)

Rev. Rul. 55-278, 1955-1 C.B. 471.

246.14 U.S. Treasury notes; registered in joint names. An individual's purchase and registration of U.S. Treasury notes in the name of the purchaser and another with a right of survivorship in a jurisdiction in which this registration creates a joint tenancy results in a completed gift of the survivorship rights in the notes and an undivided one-half interest in the interest payments and redemption rights pertaining to the notes. Purchase and registration of Treasury notes in a jurisdiction in which a joint tenancy is not created by such registration results in a gift of the survivorship rights in the interest payments and in the notes at maturity. Computation of the value of the gifts in both situations is set forth.§25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 78-215, 1978-1 C.B. 298.

246.15 Valuation of restricted stock. Guidelines are set forth for the valuation, for Federal tax purposes, of securities that cannot be immediately resold because they are restricted from resale pursuant to Federal securities laws. Rev. Rul. 59-60 amplified.§25.2512-2 (Secs. 170, 2031, 2032, 2512; '54 Code.)

Rev. Rul. 77-287, 1977-2 C.B. 319.

246.16 Valuation; closely held corporation. The valuation of stock in a closely held company should take into account a proposed merger of the company with a publicly owned corporation. §25.2512-2. (Sec. 2512, '54 Code.)

Rev. Rul. 78-367, 1978-2 C.B. 249.

246.17 Valuation; closely held or no fair market value; intangible assets. In valuing the stock of closely held corporations, or the stock of corporations where market quotations are not available, all other available financial data, as well as all relevant factors affecting the fair market value must be considered. The general approach methods and factors which must be considered in valuing such securities are outlined. Sec. 4.02(f) is modified to eliminate the rule that the value of intangible assets of a business may be measured by the amount by which the appraised value of the tangible assets exceeds the net book value of such assets. Rev. Rul. 54–77 superseded. Amplified by Rev. Rul. 77–287. Modified by Rev. Rul. 83–120. §25.2512–2. (Sec. 1005, '39 Code; Sec. 2512, '54 Code.)

Rev. Rul. 59–60, 1959–1 C.B. 237; Rev. Rul. 65–193, 1965–2 C.B. 370.

246.18 Valuation; recapitalization of closely held business. The significant factors in deriving the fair market value of preferred and common stock received in certain corporate reorganizations are discussed. Rev. Rul. 59–60 amplified. §§20.2012–2, 25.2512–2. (Secs. 305, 351, 354, 368, 2031, 2512; '54 Code.)

Rev. Rul. 83–120, 1983–2 C.B. 170.

246.19 Valuation; shares in mutual funds. The Service will not disturb the valuation prior to October 11, 1963, of shares in an open-end investment company, which are returned on the basis of the redemption value or the mean between the redemption value and the public offering price.§25.2512–6. (Sec. 601.105, S.P.R.; Sec. 2512, '54 Code.)

Rev. Proc. 64–18, 1964–1 (Part 1) C.B. 681.

246.20 Valuation; voting trust certificates. In 1946, family members deposited their stock in a corporation, representing 51% control, into a 20 year voting trust for certificates. The trust agreement provided for prior termination or extension and contained preemption provisions which required a first-offer to other certificate holders and then to corporation employees before certificates could be sold. The pre-emption price was based on dividends and all transferred certificates remained subject to the terms of the agreement. Periodic inter-vivos gifts and transfers were made before and after death. On estate tax returns, the certificates were valued at the prevailing preemption price which was always substantially lower than the over-the-counter quote. The Commissioner contended that the pre-emption price should be ignored and the certificates valued at the value of the underlying stock. *Held*, the preemption price was not determinative as to value but is a factor to be considered along with all other relevant valuation factors and neither the over-the-counter price of the underlying shares nor the formula price represented the absolute index of fair market value. (Secs. 2031, 2512; '54 Code.)

Pearl Gibbons Reynolds, 55 T.C. 172, Acq., 1971–2 C.B. 2.

246.21 Valuation; voting trust certificates. The estate adjusted current earnings by an extraordinary bad debt loss for purposes of applying a price-earnings ratio to arrive at a value, subsequently discounted, for a minority interest in closely held voting trust certificates. The Commissioner disallowed the bad debt deduction and the discount, basing the values on the assumption of a private sale of all the stock. *Held*, the bad debt deduction, while affecting future earnings, does not affect the current earnings and is allowed; the discount was proper as the shares do not represent voting control. (Secs. 2031, 2035, 2512; '54 Code.)

Louis Zaiger, 64 T.C. 927, Acq., 1976–1 C.B. 1.

Seizure of property
(See: ADMINISTRATIVE: Levy)

Situs of property
(See: Property)

Split gifts
(See: Husband and wife)

Statute of limitations
(See: ADMINISTRATIVE: Limitation period)

Suits
(See: ADMINISTRATIVE)

Tax
(See: ADMINISTRATIVE: Payment of tax; Refunds and credits)

Tax conventions

Administrative

Australia

248.1 Code of Federal Regulations; redesignated. Regulations under tax conventions appearing in 26 CFR are transferred to Subchapter G and redesignated as Part 500 et seq.

Announcement (CFR Editorial Redesignations), 1961–1 C.B. 863.

248.2 Securities. Where a donor, a U.S. citizen and resident, made a gift of securities which are deemed to be situated in Australia, under Article III(1)(d) of the U.S.—Australia gift tax convention, and the Commonwealth gift duty imposed by Australia with respect to the gift exceeds the Federal gift tax imposed by the U.S., under paragraph (1) of Article V of the convention a credit against the Federal gift tax is allowed for the full amount of the Federal gift tax imposed.

Rev. Rul. 66–119, 1966–1 C.B. 359.

Tax Court
(See: ADMINISTRATIVE)

Tenancy by the entirety
(See: Joint interests)

Transferees
(See: ADMINISTRATIVE: Liability for tax)

Transfers

250.1 Acquiescence in a recapitalization of closely held stock in a trust; release of general power of appointment. Acquiescence in a recapitalization of closely held stock in a trust is a transfer by the trust beneficiary subject to the gift tax, where the recapitalization results in a shift in the beneficiary's interest by decreasing the value of the remainder interest over which the beneficiary has a general power of appointment. §§20.2036–1, 20.2041–3, 25.2511–1, 25.2514–1. (Secs. 2036, 2041, 2511, 2514; '54 Code.)

Rev. Rul. 86–39, 1986–11 I.R.B. 23.

250.2 Adequate and full consideration; compromise of dispute. The decedent, within three years of her death, transferred to her step children a remainder interest in real estate in settlement of a dispute with them over property to which title vested absolutely in the decedent when her husband died and left her as surviving tenant by the entireties. *Held*, the settlement was regarded as "economically advantageous" by the decedent; therefore, the transfer was not subject to the gift tax as it was made for an adequate and full consideration in money or money's worth. (Sec. 2512, '54 Code.)

Gertrude Friedman, 40 T.C. 714, Acq., 1964–1 (Part 1) C.B. 4.

250.3 Anticipation of death; subsequently returned to transferor. The transfer of funds by an individual to his niece in anticipation of his death to pay his outstanding debts, funeral and other expenses incurred in settlement of his estate, was, under state law, an incomplete gift even though the amount transferred could have exceeded the amount required to cover the debts and expenses. Likewise, the niece's return of the funds upon his recovery from illness did not result in a taxable gift.§25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 74–365, 1974–2 C.B. 324.

250.4 Charitable remainder unitrust; revocable secondary life interest. An individual made an incomplete gift to the individual's spouse, for purposes of section 2511, when the individual created and funded an inter vivos charitable remainder unitrust and reserved the right to revoke the spouse's secondary life interest by will. However, since the charitable organization will in all events receive the corpus upon the death of the survivor of the individual and the spouse, the individual has made a completed transfer to the organization, and a charitable deduction is allowable under section 2522 for the value of such remainder interest. §§25.2511–2, 25.2522(c)–3. (Secs. 2511, 2522; '54 Code.)

Rev. Rul. 79–243, 1979–2 C.B. 343.

250.5 Community interest transferred to testamentary trust. The effective date of a gift, under an agreement that was properly executed in compliance with section 26.16.120 of the Revised Code of the State of Washington, whereby a wife agrees to transfer her community interest in her husband's estate to a testamentary trust for her benefit when his estate is settled, is the date of the husband's death.§25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 69–346, 1969–1 C.B. 227.

250.6 Community property; income from realty; Louisiana The transfer to the spouse of an amount equal to one-half of the net income received from real property purchased in Louisiana by a person who took title thereto in his own name will not constitute a gift unless it was stipulated that the property was purchased with his separate funds and for his separate use. The spouse is presumed to have acquired a one-half community interest in the property at the date of purchase.§86.1. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 55–461, 1955–2 C.B. 608.

250.7 Community property; re-registration of stock in wife's name; New Mexico. The re-registration by a husband of one-half the shares of stock held as New Mexico community property into his wife's name to be held as her separate property is a gift by the husband of his survivorship interest in such stock. Modified by Rev. Rul. 75–551.§25.2511–2 (Sec. 2511, '54 Code.)

Rev. Rul. 70–401, 1970–2 C.B. 197.

250.8 Community property; re-registration of stock in wife's name; New Mexico. After June 1973, the re-registration by a husband of one-half the shares of stock held as New Mexico community property into his wife's name to be held as her separate property is not considered to be a gift. Rev. Rul. 70–401 modified. §25.2511–2. (Secs. 1002, 2511; '54 Code.)

Rev. Rul. 75–551, 1975–2 C.B. 378.

250.9 Community property; testamentary trust. Taxpayer entered into a joint and contractual will with her husband whereby the community property of the first to die was to be placed in a testamentary trust. When her husband died, she laced her share of the community into a separate trust as agreed. From the trust she was entitled to ncome for life and corpus as needed or approved y her children the ultimate recipients of the roperty. The remainder was to pass to the testamentary trust at her death. *Held,* she did not part with either legal title to or economic benefits of a remainder interest in her share of the community property and did not make a taxable gift. (Secs. 2501, 2511; '54 Code.)

Sallie B. Hambleton, 60 T.C. 558, Acq. in result, 1974–1 C.B. 1.

250.10 Completed gift; death benefit. An employee entered into an employment contract in which the employer agreed to pay a death benefit of twice the annual salary at the time of death to the employee's surviving spouse, but only if the employee was still employed at the time of death. The death benefit was not funded. The employee made a gift of a present interest in the quarter in which death occurred—the time when the value of the death benefit became ascertainable—and the gift qualifies for the annual exclusion allowable under section 2503(b). §§25.2503–2, 25.2511–1, 25.2512–1. (Secs. 2503, 2511, 2512; '54 Code.)

Rev. Rul. 81–31, 1981–1 C.B. 475.

250.11 Completed gifts; trust; reserved powers. The taxpayer made an irrevocable transfer in trust in 1943, which provided for periodic payments of specified amounts from income to named beneficiaries and, upon termination, for distribution of trust principal to named beneficiaries. The taxpayer reserved power in himself to change, substitute, or eliminate beneficiaries of principal (except that he could not substitute himself as beneficiary), but not of income or accumulated income, and to designate successor trustees (including himself). The trust instrument also gave the trustees unlimited discretion to distribute principal and excess income to any of the named beneficiaries. *Held,* the transfer was not a completed gift of principal in 1943 although it was a completed gift of income of the trust. (Sec. 2511, '54 Code.)

Joseph Goldstein, 37 T.C. 897, Acq., 1964–1 (Part 1) C.B. 4.

250.12 Completed gifts; trust; resignation of settlor-trustee. The resignation of a settlor-trustee as trustee of an irrevocable trust providing for income accumulation for beneficiaries, reversion of corpus or its original value, and control in the trustee over disposition of corpus, effected a completed transfer.§25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 72–571, 1972–2 C.B. 533.

250.13 Completed gifts; trust; rights retained by grantor. Creation of a trust that provides for reversion of principle to the grantor or the grantor's estate after ten years and one month and for distribution of the annual net income to beneficiaries described in sections 170(c) and 2522 in accordance with the grantor's designation made prior to the beginning of the year or, upon the grantor's failure to so designate, in accordance with the trustee's selection at the end of the year, does not constitute a completed gift. The exercise or lapse of the grantor's power to designate the beneficiary will result in a completed gift; however, no deduction is allowable by virtue of section 2522(c)(2).§§25.2511–2, 25.2522(c)–3. (Secs. 2511, 2522; '54 Code.)

Rev. Rul. 77–275, 1977–2 C.B. 346.

250.14 Conditional; donee's assumption of gift tax liability. A donor who makes a gift of property on condition that the donee pay the resulting gift tax realizes taxable income to the extent that the gift tax exceeds the donor's adjusted basis in the property. (Secs. 1001, 2502; '54 Code.)

Diedrich, 457 U.S., Ct. D. 2013, 1982–29 I.R.B. 7.

250.15 Contingent on college graduation. An individual promised to pay the individual's child a sum of money if the child graduated from college. The child graduated in a later year, but the parent refused to pay the money. The child sued, and the parent paid the promised sum of money under a judgement of the local court in the year after the year of graduation. For federal gift tax purposes, the parent made a gift to the child on the date of graduation, the date the parent's promise became enforceable and determinable in value. §25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 79–384, 1979–2 C.B. 344.

250.16 Discretionary trust; assets subject to claims of grantor's creditors. The transfer of property to an irrevocable inter vivos trust created in, and administered under the laws of, a state in which the trust is deemed a "discretionary trust" whose assets are subject to claims of the grantor's creditors, does not constitute a completed gift. §25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 76–103, 1976–1 C.B. 293.

250.17 Divorce settlement; trust; provision for discretionary payments. The terms of a divorce property settlement trust require that the trustee pay all the trust income to the wife, and should she become physically or mentally incompetent, pay any income not necessary for her care and maintenance either to her or the adult children, or accumulate the surplus and add it to the trust principal. The amount deemed a transfer for full and adequate consideration is the amount required to be paid in the event of the wife's incompetency, and not the present value of the right to receive the entire income from the trust. §25.2516–1. (Sec. 2516, '54 Code.)

Rev. Rul. 75–73, 1975–1 C.B. 313.

250.18 Gifts to minors under Uniform Gifts to Minors Act. A transfer of property to a minor under statutes patterned after either the Model Gifts of Securities to Minors Act or the Uniform Gifts to Minors Act constitutes a completed gift at the time the transfer was made, and such a gift qualifies for the annual exclusion.§25.2503–4. (Sec. 2503, '54 Code.)

Rev. Rul. 59–357, 1959–2 C.B. 212.

250.19 Gifts to minors under Uniform Gifts to Minors Act; age of majority lowered by State. The allowance of the annual exclusion under section 2503(b) of the Code is not affected by the amendment of a State's Uniform Gifts to Minors Law lowering the age of majority and thus requiring that property be distributed to a minor donee at age 18.§25.2503–4. (Sec. 2503, '54 Code.)

Rev. Rul. 73–287, 1973–2 C.B. 321.

250.20 Incident to inadequately funded marital trust; no qualified disclaimer. A pecuniary bequest for the benefit of a surviving spouse is inadequately funded by the executor during probate administration. In the absence of a qualified disclaimer, the marital deduction allowed is the amount that should have funded the marital trust, and the surviving spouse had made a gift to a third-party beneficiary equal to the unfunded amount. §§20.2056(a)–1, 25.2511–1. (Secs. 2056, 2511, 2518; '54 Code.)

Rev. Rul. 84–105, 1984–29 I.R.B. 28.

250.21 Interest-free demand loans and low interest loans. Valuation and reporting requirements are set forth for gifts resulting from low interest and interest-free demand loans outstanding during 1984 and prior years. §§25.2511–1, 25.2512–1. (Sec. 601.602, S.P.R.; Secs. 2511, 2512, 7872, '54 Code.)

Rev. Proc. 85–46, 1985–37 I.R.B. 104.

250.22 Interest-free loans by parents to children. Non-interest bearing loans made by a parent to a corporation, wholly-owned by his son, in return for two promissory notes, one payable in ten years and the other payable upon demand, constitute a gift to the son of the value of the use of the money. The value of the right to use the money loaned for the fixed period is subject to tax at the time the money and note were exchanged. A gift was made of the use of the money subject to the demand note during so much of each quarter of the year as such use was permitted. The Service will not follow the decision in *Elizabeth McGhee Johnson* that interest-free-loans, repayable upon demand made by parents to their children do not constitute gifts.§25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 73–61, 1973–1 C.B. 408.

250.23 Interest-free loans to trust for benefit of children. Interest-free loans by a general partnership to trusts for the benefit of the partners' children and other relatives do not constitute taxable gifts by the partners of the interest-free use of the loaned funds. (Sec. 2511, '54 Code.)

Lester Crown, 67 T.C. 1060, Nonacq., 1978–1 C.B. 2.

250.24 Interest-free loans; intrafamily. Under section 2501, intrafamily, interest-free demand loans result in taxable gifts of the reasonable value of the use of the money lent. (Secs. 2501, 2511; '54 Code.)

Dickman, 465 U.S., Ct. D. 2025, 1984–1 C.B. 197

250.25 Interests in property; cash value of insurance. The irrevocable assignment of the cash surrender value of a life insurance policy to a college by a donor who retains the right to designate the beneficiary and to assign the balance of the policy, whether the policy is paid-up and the college is given possession or the policy is non-paid-up and the donor retains possession, is a gift of neither the donor's entire interest in the policy nor an undivided portion of that interest, and no gift tax charitable deduction is allowed. §25.2522(c)–3. (Sec. 2522, '54 Code.)

Rev. Rul. 76–200, 1976–1 C.B. 308.

250.26 Interests in property; undivided portion of remainder. A transfer to a charitable organization of one-half of a donor's remainder interest in a trust created by another, which is the donor's only interest in the trust property, is the transfer of an undivided portion of the donor's entire interest in the trust. A charitable deduction is allowable under section 2522. §25.2522(c)–3. (Sec. 2522, '54 Code.)

Rev. Rul. 79–295, 1979–2 C.B. 349.

250.27 Interests in property; undivided portion. Application of section 2522(c) of the Code to deductions for gifts made after July 1969 and before October 4, 1972 where the interest transferred is an undivided portion of a donor's entire interest in property.§25.2522(c)–3. (Sec. 601.105, S.P.R.; Sec. 2522, '54 Code.)

Rev. Proc. 72–45, 1972–2 C.B. 826.

250.28 Jointly-held property transferred to trust. The transfer to a trust of jointly-held independently severable property with reserved joint and survivor life estates is a reciprocal exchange between joint tenants, not a gift, to the extent the transfers are of equal value.§25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 69–505, 1969–2 C.B. 179.

250.29 Legatee's payments to third party beneficiaries. Payments by a sole legatee to her nieces and nephews, in accordance with an enforceable contract between the legatee and the niece's and nephew's parents, of the amount of the legacy they would have received if their parents' bequest had not lapsed, were taxable as gifts at the date of the testator's death. §25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 75-71, 1975-1 C.B. 309.

250.30 Life insurance; split-dollar. A corporation entered into a "split-dollar" life insurance arrangement with the spouse of an employee under which the spouse and the corporation each pay a portion of the premiums for a policy on the life of the employee, and the spouse is owner of the policy. The value of the life insurance provided by the corporation which is included in the income of the employee is deemed transferred to the spouse and is subject to gift tax. §§25.2501-1, 25.2511-1. (Secs. 61, 2501, 2511; '54 Code.)

Rev. Rul. 78-420, 1978-2 C.B. 67.

250.31 Life insurance; split-dollar; annual premiums. An employee, as the owner of an insurance policy held under a "split-dollar" arrangement, transferred the rights in the policy to a trust for the benefit of the employee's child. The value of the gift of the policy is the interpolated terminal reserve of the policy plus the proportionate part of the premiums paid before the date of the gift reduced by the value of the employer's interest in the policy. The employee's payment of the annual premiums after the transfer is also a gift. Further, the value of the life insurance provided by the employer, which is included in the employee's income, is deemed transferred to the trust. §§25.2511-1, 25.2512-6. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 81-198, 1981-2 C.B. 188.

250.32 Medical expenses paid on behalf of another. The direct payment of unreimbursable medical expenses to the service provider by a donor on behalf of another is not subject to gift tax under section 2503(e), effective for gifts made after December 31, 1981. Rev. Ruls. 54-343 and 73-612 amplified. §§25.2503-1, 25.2512-8. (Secs. 2503, 2512; '54 Code.)

Rev. Rul. 82-98, 1982-1 C.B. 141.

250.33 Option; nominal consideration; related party. A transfer to a related party for nominal consideration of an option to purchase real property, for a specified period at a price below fair market value, is a completed gift on the date the option is transferred if under state law the option is binding and enforceable on the date of transfer. §25.2511-2. (Sec. 2511, '54 Code.)

Rev. Rul. 80-186, 1980-2 C.B. 280.

250.34 Payments for jointly-held real property. An individual who provides the funds for the down payment for a purchase of real property and has title conveyed to the joint ownership, with rights of survivorship, of the individual and the individual's two children, any of whom under local law may unilaterally sever his or her interest, has made taxable gifts of one-third interests to each of the children, valued at one-third of the down payment. The individual's subsequent payments without expectation of reimbursement of the total amounts due monthly on the mortgage are also gifts, each equal to one-third of each payment. §§25.2511-1, 25.2512-8. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 78-362, 1978-2 C.B. 248.

250.35 Payments from incapacitated ward's estate; Florida. Court-approved payments made under Florida law by a guardian from the estate of an incapacitated ward to a person who is not a legal dependent of the ward are transfers subject to the gift tax.§25.2511-1. Amplified by Rev. Rul. 82-98. (Sec. 2511, '54 Code.)

Rev. Rul. 73-612, 1973-2 C.B. 322.

250.36 Pledge of donor honored by third party. An individual made a binding pledge to a charitable organization that was honored by a third party. The individual is considered to have made a gift to the charity at the time the pledge became enforceable, and the third party made a gift to the individual at the time the pledge was honored. The individual is entitled to a charitable gift deduction, but the third party is not. §§25.2511-2, 25.2522(a)-1. (Secs. 2511, 2522; '54 Code.)

Rev. Rul. 81-110, 1981-1 C.B. 479.

250.37 Political contributions. Expenditures made by taxpayers to finance the election campaigns of various individuals for public office do not constitute transfers taxable as gifts. (Secs. 2501, 2511; '54 Code.)

David W. Carson, 71 T.C. 252, Nonacq., 1979-2 C.B. 2.

250.38 Political contributions. The Service will no longer contend that contributions to or on behalf of political organizations described in section 527(e) are transfers subject to the gift tax, irrespective of when the transfers were made. §25.2501-1. (Sec. 2501, '54 Code.)

Rev. Rul. 82-216, 1982-2 C.B. 220.

250.39 Promissory note unsatisfied at death. The gratuitous transfer of a legally binding promissory note is a completed gift under section 2511. If the note has not been satisfied at the promisor's death, no deduction is allowable under section 2053(a)(3) for the promisee's claim with respect to the note. The completed gift is not treated as an adjusted taxable gift in computing the tentative estate tax under section 2001(b)(1). Rev. Rul. 67-396 clarified. §§20.2053-4, 25.2511-1, 25.2512-4. (Secs. 2001, 2053, 2511, 2512; '54 Code.)

Rev. Rul. 84-25, 1984-1 C.B. 191.

250.40 Property; antenuptial agreement; effective date. The effective date of a gift that is made in future years pursuant to a legally enforceable antenuptial agreement is the date of marriage, provided such gift is susceptible of valuation at that time. (Sec. 2511, '54 Code.)

Rev. Rul. 69-347, 1969-1 C.B. 227.

250.41 Property; exchanged for private annuity. Where appreciated property is transferred for a private annuity contract in an intrafamily exchange, the excess of the fair market value of the property over the present value of the annuity acquired constitutes a gift. The income tax treatment of this transaction is explained.§25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 69-74, 1969-1 C.B. 43.

250.42 Property; payment of sale proceeds to spouse. The spouse of the owner of real property demanded and received one half of the proceeds from the sale of the property in exchange for the release of the spouse's inchoate interest, which was similar to a dower interest. The transfer of the sale proceeds is included in computing the amount of taxable gifts made by the owner in the calendar quarter. §25.2512-8. (Secs. 61, 1012, 2512; '54 Code.)

Rev. Rul. 79-312, 1979-2 C.B. 29.

250.43 Property; tax paid by donee; computation. Examples of the tax computation applying the formula contained in Rev. Rul. 75-72 are given for property in various states transferred gratuitously by donors residing therein, with the understanding that the donee would pay the resulting Federal and state gift taxes. §25.2512-1. (Sec. 2512, '54 Code.)

New York,

Rev. Rul. 76-49, 1976-1 C.B. 294.

North Carolina,

Rev. Rul. 76-57, 1976-1 C.B. 297.

California,

Rev. Rul. 76-104, 1976-1 C.B. 301.

Virginia,

Rev. Rul. 76-105, 1976-1 C.B. 304.

250.44 Property; tax paid by donee; valuation. The gift tax attributable to the transfer of property paid by the donee may be deducted from the value of transferred property where it is expressly shown or implied that payment of tax by the donee or from the property itself is a condition of the transfer. Rev. Rul. 71-232 superseded. §§25.2511-1, 25.2512-1. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 75-72, 1975-1 C.B. 310.

250.45 Property; tax paid by donee; valuation; Wisconsin. Wisconsin law establishes a joint liability for the Wisconsin gift tax between the donor and the donee, both before and after the tax becomes overdue. For federal gift tax purposes, the gross value of transferred property is reduced by one-half of the amount of the Wisconsin gift tax if the donor transfers the property subject to the condition that the donee pay all the resulting Wisconsin gift tax and the donee relinquishes the right to contribution. §25.2512-1. (Sec. 2512, '54 Code.)

Rev. Rul. 80-111, 1980-1 C.B. 208.

250.46 Real property; exclusions; adjustment based on Service's valuation of the property The value of a gift will be determined without regard to an adjustment clause that provides for the recharacterization of the transaction depending on the Service's valuation of the property. §§2501-1, 25.2503-3, 25.2511-2. (Secs. 2501, 2503, 2511; '54 Code.)

Rev. Rul. 86-41, 1986-12 I.R.B. 9.

250.47 Real property; exclusions; completed gifts. Transfers by a donor of specified portions of real property equal in value to the annual gift tax exclusion allowable for the years of the transfer constitute completed gifts each year of the portions transferred, and each gift qualifies for the annual exclusion under section 2503. §§25.2501-1, 25.2503-3, 25.2511-2. (Secs. 2501, 2503, 2511; '54 Code.)

Rev. Rul. 83-180, 1983-2 C.B. 169.

250.48 Renounced bequest; power of appointment in legatee. The renunciation of a testamentary bequest by the legatee and the exercise of a special power of appointment under the will, as permitted under state law, to appoint the bequest to certain individuals in the classes of persons indicated in the decedent's will results in a taxable gift. §25.2511-1 (Sec. 2511, '54 Code.)

Rev. Rul. 76-156, 1976-1 C.B. 292.

250.49 Running of statute of limitations on recovery of loan. An individual who permits the statute of limitations to run on recovery of a loan to a family member made a gift, where the debtor had some financial resources available to repay the loan. §25.2511-2. (Sec. 2511, '54 Code.)

Rev. Rul. 81-264, 1981-2 C.B. 185.

250.50 Securities; joint brokerage account. The creator and sole contributor of a joint brokerage account with securities registered in the name of the nominee of the firm does not make a gift to the other joint owner unless and until the other joint owner draws on the account for his own benefit.§25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 69-148, 1969-1 C.B. 226.

250.51 Securities; minor; Colorado. A transfer of securities to a minor pursuant to a Colorado statute which requires the securities to be registered in the name of the donor, the name of any adult member of the minor's family, or the minor's guardian as custodian or, in the case of bearer securities the delivery to an adult member of the minor's family other than the donor, as custodian, accompanied by a deed of gift, constitutes a completed gift at the time the transfer was made. Such gifts qualify for the annual exclusion. (Sec. 2503, '54 Code.)

Rev. Rul. 56-86, 1956-1 C.B. 449.

250.52 Separate to community property; Washington State. The written agreement by a husband and wife, residing in Washington State, providing that all real and personal property presently owned or subsequently acquired will be community property results in a single gift of the value of the property interests transferred and additional gifts will occur with respect to separate acquisitions in future years that are converted to community property pursuant to the agreement. G.C.M. 19248 superseded.§25.2511-1. (Secs. 61, 2511; '54 Code.)

Rev. Rul. 77-359, 1977-2 C.B. 24.

250.53 Spendthrift trust; future interest. A gift of the present right to enjoy the income from a trust for a period of years or for life is not a gift of a future interest solely because of the inclusion in the trust instrument of a provision or clause which prohibits the income beneficiary from alienating, assigning, or otherwise anticipating such income.§86.11. (Sec. 1003, '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 54-344, 1954-2 C.B. 319.

250.54 Spendthrift trust; right of revocation reserved. Donors transferring properties to a trust but reserving the power to revoke the trust instrument are not subject to the gift tax. Upon the death of such donors, the properties which comprise the corpus of the trust funds under the trust are entitled to new bases in the hands of the trustees under the provisions of section 1014(b)(2) and (3) of the Code, since none of the donors have any adverse interest in the disposition of the property. (Sec. 2511, '54 Code.)

Rev. Rul. 58-395, 1958-2 C.B. 398.

250.55 Stock in auto dealership; valuation. Taxpayers transferred, by gift and by sale, stock in an auto dealership operated under a franchise agreement that, in effect, prohibited giving any value to goodwill on transfer of the franchise. The assignment of per share value was based on the net fair market value of the tangible assets of the business. *Held,* the value of the shares is determined by the net fair market value of the tangible assets of the corporation and goodwill in this case has no value. (Sec. 2512, '54 Code.)

Frank E. Zorniger, 62 T.C. 435, Acq. in result, 1975-1 C.B. 2.

250.56 Stock of DISC and continued contractual relationship. The tax consequences are discussed of (1) a gift by the shareholders of a manufacturing corporation of stock in a newly formed DISC to trusts for the benefit of their children and (2) a continued contractural relationship between their corporations, pursuant to which sales commissions are paid to the DISC in exchange for no significant services. §§25.2501-1, 25.2511-1, 25.2512-8. (Secs. 2501, 2511, 2512; '54 Code.)

Rev. Rul. 81-54, 1981-1 C.B. 476.

250.57 Stock of domestic corporation; nonresident aliens. A gift of stock of a domestic corporation by a nonresident alien is not taxable unless he was engaged in business in the U.S. during the calendar year in which the gift was made. (Secs. 2501, 2511; '54 Code.)

Rev. Rul. 56-438, 1956-2 C.B. 604.

250.58 Stock transferred to corporate employees by controlling shareholders. The transfer of a corporation's stock by the corporation's two shareholders to three employees for a valid business reason, to retain valuable employees, is made for adequate and full consideration and is not subject to the gift tax. §§25.2511-1, 25.2512-8. (Secs. 61, 83, 1012, 2511, 2512; '54 Code.)

Rev. Rul. 80-196, 1980-2 C.B. 32.

250.59 Stock; conditioned on gift tax payment. A donor transferred stock conditioned on payment of gift tax by the recipients, her children, who agreed to the condition. The Commissioner contended that the transaction was part sale and part gift. *Held,* the donor intended and in fact made a net gift to each recipient; further, the transferee's basis in the stock was the same as the transferor and he is entitled to tack on the transferor's holding period to his own. (Sec. 2511, '54 Code.)

Richard H. Turner, 49 T.C. 356, Nonacq., 1971-1 C.B. 3.

250.60 Tax paid by donee; valuation. The gift tax liability assumed by the donee may be deducted from the value of transferred property if payment of tax by donee is a condition of the transfer. The donor's available unified credit is used to reduce the tax in determining the liability. §§25.2511-2, 25.2512-8. (Secs. 2505, 2511, 2512; '54 Code.)

Rev. Rul. 81-223, 1981-2 C.B. 189.

250.61 Trust; administrative powers; fiduciary; marital deduction. Examples are provided to illustrate the principle that directions to, or powers conferred upon, an executor or trustee under a will or inter vivos trust instrument or by local law (as aids in managing trusts) do not result in the disallowance or diminution of the marital deduction.§§20.2056(b)-5, 25.2523(e)-1. (Secs. 2056, 2523; '54 Code.)

Rev. Rul. 69-56, 1969-1 C.B. 224.

250.62 Trust; contingent remainder interest. A trust beneficiary's disclaimer of ownership of a contingent remainder interest in property transferred by will thirty-three years after the interest was created, though still effective under local law, is not "within a reasonable time" and constitutes an indirect gift to a successor in interest subject to gift tax liability. §25.2511-1. (Sec. 2511, '54 Code.)

Jewett, 455 U.S., Ct. D. 2012, 1982-1 C.B. 142.

250.63 Trust; contingent remainder interests. The terms of a will gave the decedent's twin children, who are the same sex, contingent remainder interest, subject to a life estate, in a testamentary trust and provided that, if one predeceased the life tenant, the surviving twin would receive the entire trust corpus. Prior to the life tenant's death, the twins entered into a legally binding contract in which they agreed that, if one of them predeceased the life tenant, the survivor would transfer one-half of the trust corpus to the children of the deceased. Each twin is considered to be the transferor of the interest received by his or her children, and the transfers are subject to the gift tax upon the execution of the contract. §25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 79-238, 1979-2 C.B. 339.

250.64 Trust; Family Estate. The Federal gift tax is not applicable, at the time of transfer, to the transfer of real and personal property and assignment of lifetime service by a grantor-trustee to a so-called "Family Estate" where the grantor continues to hold broad discretionary powers over the transferred property. §25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 75-260, 1975-2 C.B. 376.

250.65 Trust; incident to divorce; release of all rights. A donor created a trust pursuant to a divorce settlement by transferring property equal in value to marital and support rights released by the donor's spouse. The terms of the trust provide for a life annuity to the spouse with the remainder payable to the adult child of the parties. The donor is deemed to have received consideration for the transfer to the spouse under section 2516. If the spouse has not specifically bargained for, and relinquished support rights in exchange for, the child's remainder interest, the donor has made a gift to the child. §§20.2043-1, 25.2512-8, 25.2516-1. (Secs. 2043, 2512, 2516; '54 Code.)

Rev. Rul. 79-363, 1979-2 C.B. 345.

250.66 Trust; incident to divorce; support rights surrendered. Factual situations illustrate the gift tax consequences of a taxpayer's transfer of property, pursuant to an agreement in contemplation of divorce and in exchange for the spouse's surrender of support rights, to a trust the income from which is payable for the life of the spouse (1) to the spouse with the remainder payable to the children of the taxpayer and spouse, (2) partially to the spouse and partially to a child of the taxpayer and spouse with the remainder payable to the children of the taxpayer and spouse, or (3) to the spouse with the remainder payable to the taxpayer's sibling. §25.2512-8. (Sec. 2512, '54 Code.)

Rev. Rul. 77-314, 1977-2 C.B. 349.

250.67 Trust; income and corpus to donor. Where a donor conveys all of his income-producing property in trust directing the trustee to pay to the donor such portion of the income and corpus as the trustee in its sole discretion shall deem necessary for the support of the donor during his life and upon the donor's death to distribute the corpus and accumulated income to his children, per stirpes, the gift in trust is not rendered wholly incomplete merely because the trustee is authorized to use the trust income and corpus for the donor's support. Modified by Rev. Rul. 62-13. §86.3. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 54-538, 1954-2 C.B. 316.

250.68 Trust; income and corpus to donor. Where property is transferred to a trust, the trustee having broad discretionary powers over the distribution to the grantor of the grantor of income and corpus, and where even though the value of the property transferred is large in amount, there appears to be no assurance at the time of creating the trust that anything of value will be paid to a beneficiary other than the grantor, such transfer constitutes an incomplete transfer and does not result in a taxable gift. Clarified by Rev. Rul. 77-378. Rev. Rul. 54-538 modified. §25.2511-2. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 62-13, 1962-1 C.B. 181; Christianna K. Gramm, 17 T.C. 1063, Acq., 1962-1 C.B. 4; Alice Spaulding Paolozzi, 23 T.C. 182, Acq., 1962-1 C.B. 4; Sarah Gilkey Vander Weele and Frederick Vander Weele, 27 T.C. 340, Acq. 1962-1 C.B. 4.

250.69 Trust; income and corpus to donor; trustee's discretion. The transfer of property to an irrevocable inter vivos trust, under the terms of which the trustee has the discretionary power, entirely voluntary under the trust instrument and applicable state law, to distribute income and principal to the grantor constitutes a completed taxable gift of the entire value of the property transferred. Rev. Rul. 62-13 clarified. §25.2511-2. (Sec. 2511, '54 Code.)

Rev. Rul. 77-378, 1977-2 C.B. 347.

250.70 Trust; income interest; value not ascertainable. The value of an income interest in a trust, whose governing instrument provides that all gains and losses from the sale of trust assets are to be credited or charged to income, is not an ascertainable present interest in property and does not qualify for the annual exclusion. §25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 77-358, 1977-2 C.B. 342.

250.71 Trust; leaseback arrangement; rental property. Rental payments made under a family arrangement which provides for the transfer of property in trust for a ten-year period for the benefit of the grantor's children with a leaseback to the grantor will constitute a completed gift, the value of which is measured by the present worth of the right to receive the net rentals from the property during the term of the trust, provided the right to such rentals is, under the terms of the transfer and applicable State law, fixed or vested. Rev. Rul. 54-9, which held that the rental payment constituted gifts when made, modified. (Sec. 2511, '54 Code.)

Rev. Rul. 57-315, 1957-2 C.B. 624.

250.72 Trust; relinquishment of income interest. A testamentary trust gave an individual a lifetime income interest in the trust property with the power to appoint all or part of the trust property during lifetime to one or more of the individual's children. The exercise of the power results in a gift under section 2511 equal to the value of the lifetime income interest at the time of the gift. §§2511-1, 25.2514-1. (Secs. 2511, 2514; '54 Code.)

Rev. Rul. 79-327, 1979-2 C.B. 342.

250.73 Trust; relinquishment of income interest. The gift tax consequences are shown of a situation in which the sole trustee of a trust, who has the discretionary power to receive or accumulate trust income, names the remaindermen and a corporation as cotrustees, and retains and subsequently releases interests in the trust. §§25.2511-2, 25.2512-9, 25.2514-3. (Secs. 2511, 2512, 2514; '54 Code.)

Rev. Rul. 79-421, 1979-2 C.B. 347.

250.74 Trust; remainder interest; value not ascertainable. A trust provision that gives the trustee the absolute discretion to allocate all of the proceeds from the sale of any minerals to income, applicable state law providing that a portion be considered principal, renders a donor's retained interest incapable of valuation and the entire value of the property transferred in trust is subject to the gift tax. §25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 76-275, 1976-2 C.B. 299.

250.75 Trust; remainder interest; value not ascertainable. A trust provision that capital gains from the sale or exchange of trust assets shall be allocated to income and that capital losses shall be allocated to principal renders a donor's reversionary interest incapable of valuation and the entire value of property transferred in trust is subject to gift tax. §25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 77-99, 1977-1 C.B. 295.

250.76 Trust; reversionary; nonincome-producing property. The transfer of nonincome-producing property to an irrevocable trust, the terms of which provide for complete discretionary power in the trustee to invest and reinvest the principal, for distribution of all net income to the transferor's child, and for reversion of the property to the transferor or the transferor's estate after ten years and one day, is valued for gift tax purposes in accordance with reg. 25.2512-9 in the same manner as a transfer of income-producing property. §§25.2511-1, 25.2512-9. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 79-280, 1979-2 C.B. 340.

250.77 Trust; revocation power held by grantor. Under the terms of a transfer in trust the right to revoke is subject to a condition which can be accomplished through the exercise of an act within the control of the grantor. *Held*, the transfer constitutes an incomplete gift inasmuch as the grantor possesses the power to revest the beneficial title to the property in himself. §86.3. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 54-537, 1954-2 C.B. 316.

250.78 Trust; settlor reserving right to income. Where the grantor under an irrevocable trust agreement retained the right to trust income and to direct by her last will the distribution of trust principal, the transfer did not result in a completed gift. §86.3. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 54-342, 1954-2 C.B. 315.

250.79 Trust; trustee's power to borrow from trust. A settlor's transfer of money to a charitable trust that is a private foundation does not qualify for a gift tax charitable deduction if the trustee, an adult child of the settlor, may borrow money from the trust. §§25.2511-1, 25.2522(c)-2. (Secs. 2511, 2522; '54 Code.)

Rev. Rul. 80-271, 1980-2 C.B. 282.

250.80 U.S. savings bonds; coowners. Series E U.S. savings bonds registered in the names of *A* and *B* as coowners were later reissued in the name of *B* alone in order to effect a gift to him. The redemption value of the bonds at the time reissued is the proper value to be used by *A* for gift tax purposes, and accrued interest on the bonds before their reissue is includible in *A's* gross income for income tax purposes. §86.19. (Sec. 1005, '39 Code; Sec. 2512, '54 Code.)

Rev. Rul. 55-278, 1955-1 C.B. 471.

250.81 U.S. Treasury notes; registered in joint names. An individual's purchase and registration of U.S. Treasury notes in the name of the purchaser and another with a right of survivorship in a jurisdiction in which this registration creates a joint tenancy results in a completed gift of the survivorship rights in the notes and an undivided one-half interest in the interest payments and redemption rights pertaining to the notes. Purchase and registration of Treasury notes in a jurisdiction in which a joint tenancy is not created by such registration results in a gift of the survivorship rights in the interest payments and in the notes at maturity. Computation of the value of the gifts in both situations is set forth. §25.2511-1. (Sec. 2511, '54 Code.)

Rev. Rul. 78-215, 1978-1 C.B. 298.

Trusts

252.1 Administrative powers; fiduciary; marital deduction. Examples are provided to illustrate the principle that directions to, or powers conferred upon, an executor or trustee under a will or inter vivos trust instrument or by local law (as aids in managing trusts) do not result in the disallowance or diminution of the marital deduction. §§20.2056(b)-5, 25.2523(e)-1. (Secs. 2056, 2523; '54 Code.)

Rev. Rul. 69-56, 1969-1 C.B. 224.

252.2 Charitable remainder. Where a trust agreement makes a present gift to charity of a future interest in property and contains a provision calling for the revocation of any of the broad discretionary powers given to the trustees if, by reason thereof, Federal tax liability is incurred, such provision is a condition subsequent which is contrary to public policy and therefore void. Accordingly, no deduction will be allowed for the present worth of the charitable remainder interest. Distinguished by Rev. Ruls. 75-440 and 76-199. §25.2522(a)-2. (Secs. 170, 2522; '54 Code.)

Rev. Rul. 65-144, 1965-1 C.B. 442.

252.3 Charitable remainder; capital gains dividends. Where an irrevocable trust provides that capital gain dividends received from stock in regulated investment companies shall be treated as corpus and held for the charitable remainderman rather than distributed to the noncharitable life tenant, the present worth of the remainder interest is deductible and may be valued by the use of the appropriate actuarial remainder table. However, where such capital gain dividends are treated as income and paid to the life tenant, the charitable interest is not severable since no formula is available for ascertaining its value and no charitable deduction is allowable. Rev. Rul. 55-620 revoked. Supplemented by Rev. Rul. 67-33. §25.2522(a)-2. (Sec. 2522, '54 Code.)

Rev. Rul. 60-385, 1960-2 C.B. 77.

252.4 Charitable remainder; capital gains dividends. Where local law authorizes a trustee to invest corpus in the stock of regulated investment companies and to pay out capital gains distributions therefrom as income under the general provisions of the governing instrument, a deduction is not allowable with respect to a charitable remainder interest as the charitable interest is not severable from the noncharitable interest. This ruling will not be applied with respect to transfers completed prior to May 1, 1967, or, under certain circumstances, to transfers made under instruments executed prior to that date. Rev. Rul. 60-385 supplemented. §§20.2055-2, 25.2522(a)-2, 301.7805-1. (Secs. 170, 2055, 2522, 7805; '54 Code.)

Rev. Rul. 67-33, 1967-1 C.B. 62.

252.5 Charitable remainder; establishment of charitable fund. A donor transferred property to an irrevocable trust upon the conditions (1) that the income be paid to the donor for life, and (2) that upon the donor's death the remainder interest in the trust be used by the trustees for the establishment and maintenance of a charitable fund. *Held*, the present worth of the remainder interest as of the time of the gift is deductible under section 2522 of the Code. E.T. 15 superseded. §§25.2512-5, 25.2522(a)-1. (Secs. 2512, 2522; '54 Code.)

Rev. Rul. 68-155, 1968-1 C.B. 411.

252.6 Charitable remainder; probability of charitable transfer. A charitable remainder interest in an irrevocable trust subject to invasion to make fixed payments to the life tenant is not deductible where the probability that the transfer will not occur is greater than five percent. §25.2522(a)-2. (Sec. 2522, '54 Code.)

Rev. Rul. 70-452, 1970-2 C.B. 199.

252.7 Charitable remainder; remaindermen added or substituted. The deduction for a remainder interest transferred in trust to an organization described in sections 170(c), 2055(a), and 2522(a) is not disallowed under section 2522(c)(2) where the trustee has the power, exercisable during the donor's life, to add and/or substitute additional organizations described in section 170(b)(1)(A) as remaindermen. §25.2522(c)-3. (Sec. 2522, '54 Code.)

Rev. Rul. 76-371, 1976-2 C.B. 305.

252.8 Charitable remainder; unitrust. The transfer of property to a charitable remainder unitrust, the trustee and remainder beneficiary of which was an organization described in sections 170(c) and 2522 at the time of the transfer, will qualify for the gift tax deduction even though the governing instrument of the trust limits ultimate distribution to organizations described in section 170(c) and there exists the remote possibility the charitable remainderman would not qualify under sections 170(c) and 2522 upon termination of the trust. A charitable deduction to the donor's estate will depend on qualification of the charitable remainderman under section 2055 at the date of the donor's death. §§20.2055–2, 20.2106–1, 25.2522(a)–1. (Secs. 170, 664, 2055, 2106, 2522; '54 Code.)

Rev. Rul. 76–307, 1976–2 C.B. 56.

252.9 Charitable transfers; undivided portion of remainder. A transfer to a charitable organization of one-half of a donor's remainder interest in a trust created by another, which is the donor's only interest in the trust property, is the transfer of an undivided portion of the donor's entire interest in the trust. A charitable deduction is allowable under section 2522. §25.2522(c)–3. (Sec. 2522, '54 Code.)

Rev. Rul. 79–295, 1979–2 C.B. 349.

252.10 Common trust funds; valuation date; fair market value. Guidelines are provided for the determination of the fair market value of participating interests in the common trust fund between the bank valuation dates for purposes of sections 2031, 2032 and 2512. A formula is provided for valuing participating interests in the common trust funds when the valuation date for estate and gift tax purposes does not coincide with the bank valuation date. §§20.2031–2, 20.2032–1, 25.2512–1. (Sec. 601.105, S.P.R.; Secs. 584, 2031, 2032, 2512, '54 Code.)

Rev. Proc. 84–17, 1984–1 C.B. 432.

252.11 Completed gifts; reserved powers. The taxpayer made an irrevocable transfer in trust in 1943 which provided for periodic payments of specified amounts from income to named beneficiaries and, upon termination, for distribution of trust principal to named beneficiaries. The taxpayer reserved power in himself to change, substitute, or eliminate beneficiaries of principal (except that he could not substitute himself as beneficiary), but not of income or accumulated income, and to designate successor trustees (including himself). The trust instrument also gave the trustees unlimited discretion to distribute principal and excess income to any of the named beneficiaries. *Held,* the transfer was not a completed gift of principal in 1943 although it was a completed gift of income of the trust. (Sec. 2511, '54 Code.)

Joseph Goldstein, 37 T.C. 897, Acq., 1964–1 (Part 1) C.B. 4.

252.12 Completed gifts; rights retained by grantor. Creation of a trust that provides for reversion of principle to the grantor or the grantor's estate after ten years and one month and for distribution of the annual net income to beneficiaries described in sections 170(c) and 2522 in accordance with the grantor's designation made prior to the beginning of the year or, upon the grantor's failure to so designate, in accordance with the trustee's selection at the end of the year, does not constitute a completed gift. The exercise or lapse of the grantor's power to designate the beneficiary will result in a completed gift; however, no deduction is allowable by virtue of section 2522(c)(2). §§25.2511–2, 25.2522(c)–3. (Secs. 2511, 2522; '54 Code.)

Rev. Rul. 77–275, 1977–2 C.B. 346.

252.13 Discretion of minor-beneficiary to compel corpus distribution. A gift to a minor under a trust that confers on its beneficiary upon reaching age 21 the right to compel immediate distribution of the corpus by written notice to the trustee that is either (1) a continuing right to compel immediate distribution or to permit the trust to continue by its own terms or (2) a right to compel immediate distribution for a limited period that, if not exercised, will permit the trust to continue by its own terms is not a gift of a future interest and qualifies for the annual exclusion. Rev. Rul. 60–218 revoked. §25.2503–4. (Sec. 2503, '54 Code.)

Rev. Rul. 74–43, 1974–1 C.B. 285; Martha J. Heidrich, 55 T.C. 746, Acq., 1974–1 C.B. 2.

252.14 Discretionary; assets subject to claims of grantor's creditors. The transfer of property to an irrevocable inter vivos trust created in, and administered under the laws of, a state in which the trust is deemed a "discretionary trust" whose assets are subject to claims of the grantor's creditors, does not constitute a completed gift. §25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 76–103, 1976–1 C.B. 293.

252.15 Distribution of principal by trustee. The gift tax exclusion does not apply to a gift in trust where the instrument provides for the distribution of income to a designated beneficiary but gives the trustee the uncontrolled discretion to determine whether or not to distribute principal. §86.10. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 54–92, 1954–1 C.B. 207.

252.16 Divorce settlement; remainder to charity. Stock irrevocably transferred to a trust for the benefit of a wife in settlement of property rights and to provide alimony payments is not a gift. The transfer of the remainder of such trust to a charitable foundation is a gift, but the amount thereof is deductible by the donor in computing taxable gifts for the taxable year in which the transfer is made. (Secs. 2516, 2522; '54 Code.)

Rev. Rul. 57–506, 1957–2 C.B. 65.

252.17 Divorce settlement; transfer of property; provision for discretionary payments. The terms of a divorce property settlement trust require that the trustee pay all the trust income to the wife, and should she become physically or mentally incompetent, pay any income not necessary for her care and maintenance either to her or the adult children, or accumulate the surplus and add it to the trust principal. The amount deemed a transfer for full and adequate consideration is the amount required to be paid in the event of the wife's incompetency, and not the present value of the right to receive the entire income from the trust. §25.2516–1. (Sec. 2516, '54 Code.)

Rev. Rul. 75–73, 1975–1 C.B. 313.

252.18 Divorce settlement; transfer of property; release of all rights. A donor created a trust pursuant to a divorce settlement by transferring property equal in value to marital and support rights released by the donor's spouse. The terms of the trust provide for a life annuity to the spouse with the remainder payable to the adult child of the parties. The donor is deemed to have received consideration for the transfer to the spouse under section 2516. If the spouse has not specifically bargained for, and relinquished support rights in exchange for, the child's remainder interest, the donor has made a gift to the child. §§20.2043–1, 25.2512–8, 25.2516–1. (Secs. 2043, 2512, 2516; '54 Code.)

Rev. Rul. 79–363, 1979–2 C.B. 345.

252.19 Divorce settlement; transfer of property; support rights surrendered. Factual situations illustrate the gift tax consequences of a taxpayer's transfer of property, pursuant to an agreement in contemplation of divorce and in exchange for the spouse's surrender of support rights, to a trust the income from which is payable for the life of the spouse (1) to the spouse with the remainder payable to the children of the taxpayer and spouse, (2) partially to the spouse and partially to a child of the taxpayer and spouse with the remainder payable to the children of the taxpayer and spouse, or (3) to the spouse with the remainder payable to the taxpayer's sibling. §25.2512–8. (Sec. 2512, '54 Code.)

Rev. Rul. 77–314, 1977–2 C.B. 349.

252.20 Family Estate. The Federal gift tax is not applicable, at the time of transfer, to the transfer of real and personal property and assignment of lifetime services by a grantor-trustee to a so-called "Family Estate" where the grantor continues to hold broad dicretionary powers over the transferred property. §25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 75–260, 1975–2 C.B. 376.

252.21 Future interest; extension of term. The extension of the income interest in a trust, made one year after the creation of a trust that provided an income interest in the adult donee for a 5-year period, is the gift of a future interest for which the annual exclusion is not allowable. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 76–179, 1976–1 C.B. 290.

252.22 Future interest; guardian not appointed for minor donee. A gift in trust for the benefit of a minor beneficiary without appointment of a legal guardian, with use of the principal and income for the benefit of the minor discretionary with the trustee, is a gift of a present interest that qualifies for the annual exclusion provided there is no impediment under the trust or local law to the appointment of a guardian and the minor has a right to demand distribution. Rev. Rul. 54–91 revoked. §25.2503–2. (Sec. 2503, '54 Code.)

Rev. Rul. 73–405, 1973–2 C.B. 321.

252.23 Future interest; merged with present interest. The gift of a remainder interest in personal property held in trust to a donee who is an income beneficiary of the trust, in a state whose law provides that such an income interest and remainder interest in the same individual merge and the trust terminates with respect to that interest, is a gift of a present interest that qualifies for the annual exclusion. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 78–168, 1978–1 C.B. 298.

252.24 Future interest; qualifying act by donee. The $3,000 annual exclusion is not allowable for a gift of one-third of the income from property, transfered to a 10-year and 3-month trust, commencing at the earlier of three years from the trust creation or the donee's termination of full-time student enrollment in an institution of higher learning. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 75–415, 1975–2 C.B. 374.

252.25 Future interest; remainder transferred to spouse. A gift to a spouse of a vested indefeasible remainder interest in a trust, such as would be includible in her gross estate in the event she should die during the 12-year period of the trust, qualified for the gift tax marital deduction. §86.16(a). (Sec. 1004, '39 Code; Sec. 2522, '54 Code.)

Rev. Rul. 54–470, 1954–2 C.B. 320.

252.26 Future interest; remainder. The gift of a fractional remainder interest in a trust to a donee who already enjoys a present income interest in the same fractional portion of the trust from a donor who intends that the donee await termination of the trust to enjoy the remainder interest, in a state whose law provides that such a trust will continue where no merger is intended by the donor, is a gift of a future interest that does not qualify for the annual exclusion. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 78–272, 1978–2 C.B. 247.

252.27 Future interest; spendthrift trust. A gift of the present right to enjoy the income from a trust for a period of years or for life is not a gift of a future interest solely because of the inclusion in the trust instrument of a provision or clause which prohibits the income beneficiary from alienating, assigning, or otherwise anticipating such income. §86.11. (Sec. 1003, '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 54-344, 1954-2 C.B. 319.

252.28 Income and corpus to donor. Where a donor conveys all of his income-producing property in trust directing the trustee to pay to the donor such portion of the income and corpus as the trustee in its sole discretion shall deem necessary for the support of the donor during his life and upon the donor's death to distribute the corpus and accumulated income to his children, per stirpes, the gift in trust is not rendered wholly incomplete merely because the trustee is authorized to use the trust income and corpus for the donor's support. Modified by Rev. Rul. 62-13. §86.3.(Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 54-538, 1954-2 C.B. 316.

252.29 Income and corpus to donor. Where property is transferred to a trust, the trustee having broad discretionary powers over the distribution to the grantor of income and corpus, and where even though the value of the property transferred is large in amount, there appears to be no assurance at the time of creating the trust that anything of value will be paid to a beneficiary other than the grantor, such transfer constitutes an incomplete transfer and does not result in a taxable gift. Clarified by Rev. Rul. 77-378. Rev. Rul. 54-538 modified. §25.2511-2. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 62-13, 1962-1 C.B. 181; Christianna K. Gramm, 17 T.C. 1063, Acq., 1962-1 C.B 4; Alice Spaulding Paolozzi, 23 T.C. 182, Acq., 1962-1 C.B. 4; Sarah Gilkey Vander Weele and Frederick Vander Weele, 27 T.C. 340, Acq. 1962-1 C.B. 4.

252.30 Income and corpus to donor. The taxpayer created an irrevocable trust, which provided for payment to the taxpayer of all income during his lifetime and as much of the principal as the trustee may think desirable for the taxpayer's welfare, comfort, support, and emergency needs. Upon the death of the taxpayer, income and principal were to be paid to his wife during her lifetime pursuant to similar terms. *Held,* no part of or interest in the property transferred to the trust was a completed gift at the time of transfer. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Leon Holtz, 38 T.C. 37, Acq., 1962-2 C.B. 4.

252.31 Income and corpus to donor; trustee's discretion. The transfer of property to an irrevocable inter vivos trust, under the terms of which the trustee has the discretionary power, entirely voluntary under the trust instrument and applicable state law, to distribute income and principal to the grantor constitutes a completed taxable gift of the entire value of the property transferred. Rev. Rul. 62-13 clarified. §25.2511-2. (Sec. 2511, '54 Code.)

Rev. Rul. 77-378, 1977-2 C.B. 347.

252.32 Income interest; minor beneficiary; present interest. Income from a trust for a minor child was to be accumulated or expended for the child's benefit at the trustee's discretion prior to the child reaching age 21, and was to be paid to the child at least annually thereafter. The income interest during the child's minority qualified as a present interest solely by reason of section 2503(c). *Held,* that income interest and the income interest for the period after the child's reaching age 21 constitute a single present interest qualifying for the annual exclusion. (Sec. 2503, '54 Code.)

David H. Levine, 63 T.C. 136, Nonacq., 1978-2 C.B. 3.

252.33 Income interest; present and future; survivor of two beneficiaries. A gift to an irrevocable trust, the principal of which is divided into two equal shares, the net income from which is payable to separate beneficiaries for life with the total of the income payable to the survivor, constitutes a gift to each beneficiary of a present interest in the income from his trust share, for which the annual exclusion is allowable, and a gift of a future interest to the survivor, for which no exclusion is allowable. §25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 75-506, 1975-2 C.B. 375.

252.34 Income interest; value not ascertainable. The value of an income interest in a trust, whose governing instrument provides that all gains and losses from the sale of trust assets are to be credited or charged to income, is not an ascertainable present interest in property and does not qualify for the annual exclusion. §25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 77-358, 1977-2 C.B. 342

252.35 Irrevocable; valuation. Upon the creation of an irrevocable, reversionary trust, the income of which is for the benefit of individuals other than the grantor, and which terminates more than ten years from the creation of the trust or upon the earlier deaths of the beneficiaries, the value of the gift is measured by the value of the property transferred minus the value of the retained interest actuarially computed. Also, the gift constitutes a gift of a present interest for purposes of the $3,000 exclusion. §86.19(f). (Sec. 1005, '39 Code; Secs. 2503, 2512, '54 Code.)

Rev. Rul. 58-242, 1958-1 C.B. 251.

252.36 Irrevocable; valuation. Certain broad discretionary powers relating to distributions and investments that were granted to the trustee of two irrevocable trusts, the governing instruments of which provided that all the income from one was payable at least annually to the grantor's father and the income from the other to the grantor's mother and that the principal of each was to revert to the grantor upon the death of the respective beneficiary, did not prevent the value of the beneficiaries' income interests in the gifts from being presently ascertainable, and the donor was, therefore, entitled to the $3,000 per donee exclusion and to have the value of the reversionary interests excluded from the taxable gifts. (Secs. 2503, 2512; '54 Code.)

Cherlyn C. Caldwell Martinez, 67 T.C. 60, Acq. in result, 1977- 2 C.B. 1.

252.37 Pooled income fund; beneficiary's income interest based on another's life. An otherwise qualifying fund whose governing instrument permits the duration of a beneficiary's income interest to be measured by the life of another does not qualify as a pooled income fund under section 642(c)(5), and the value of a remainder interest in property transferred to the fund is not deductible under section 170, 2055, 2106, or 2522, even though the instrument of transfer bases the duration of the designated beneficiary's income interest on the beneficiary's life. The fund's governing instrument may be amended to qualify prospectively if the fund has not accepted property under a defective instrument of transfer. §§20.2055-2, 20.2106-1, 25.2522(c)-3. (Secs. 170, 642, 2055, 2106, 2522; '54 Code.)

Rev. Rul. 79-61, 1979-1 C.B. 220.

252.38 Power to demand corpus; present v. future interest. A trust provision that gives a legally competent adult beneficiary the power to demand corpus does not qualify a transfer to the trust as a present interest eligible for the gift tax annual exclusion, if due to the donor's conduct, the beneficiary lacks knowledge of the power and does not have a reasonable opportunity to exercise it before it lapses. Distinguished by Rev. Rul. 83-107. §25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 81-7, 1981-1 C.B. 474.

252.39 Powers of appointment; release of general power after shift in value of trust assets. Acquiescence in a recapitalization of closely held stock in a trust is a transfer by the trust beneficiary subject to the gift tax, where the recapitalization results in a shift in the beneficiary's interest by decreasing the value of the remainder interest over which the beneficiary has a general power of appointment. §§20.2036-1, 20.2041-3, 25.2511-1, 25.2514-1. (Secs. 2036, 2041, 2511, 2514; '54 Code.)

Rev. Rul. 86-39, 1986-11 I.R.B. 23.

252.40 Present interest; ascertainable value. Gifts of the right to share in trust corpus upon a grantor's death are gifts of future interests and do not qualify for the annual exclusion. However, although after-born members of a class share in trust income, the exclusion will be allowed to the extent it can be shown that there is a severable present interest which has some ascertainable value. (Sec. 2503, '54 Code.)

Rev. Rul. 55-678, 1955-2 C.B. 389.

252.41 Present interest; at least $3,000. Where it can be demonstrated that the value of the present interest of each beneficiary in the income from a trust established for a term of years will equal $3,000, the gift tax exclusion is allowable, although the number of eventual donees is not ascertainable or the present interest of each beneficiary is not susceptible of valuation. (Sec. 2503, '54 Code.)

Rev. Rul. 55-679, 1955-2 C.B. 390.

252.42 Present interest; right to receive portion of corpus. A gift of a right to demand and receive at least a pro rata portion of trust corpus conveyed to several donees is a gift of a present interest to the extent of each donee's pro rata portion, and the annual exclusion under section 2503 is allowable. §25.2503-3. (Sec. 2503, '54 Code.)

Rev. Rul. 80-261, 1980-2 C.B. 279.

252.43 Relinquishment of income interest. A testamentary trust gave an individual a lifetime income interest in the trust property with the power to appoint all or part of the trust property during lifetime to one or more of the individual's children. The exercise of the power results in a gift under section 2511 equal to the value of the lifetime income interest at the time of the gift. §§2511-1, 25.2514-1. (Secs. 2511, 2514; '54 Code.)

Rev. Rul. 79-327, 1979-2 C.B. 342.

252.44 Relinquishment of income interest. The gift tax consequences are shown of a situation in which the sole trustee of a trust, who has the discretionary power to receive or accumulate trust income, names the remaindermen and a corporation as cotrustees, and retains and subsequently releases interests in the trust. §§25.2511-2, 25.2512-9, 25.2514-3. (Secs. 2511, 2512, 2514; '54 Code.)

Rev. Rul. 79-421, 1979-2 C.B. 347.

252.45 Remainder interest; enlargement. The chief beneficiary of a trust requested the trustee to distribute the trust assets to him so that he could provide for his wife. The trustee refused, but transferred assets to a second trust similar to the first, conferring additional benefits to the wife with an absolute discretionary power in the trustee. *Held,* the transfer was not a gift, because the chief beneficiary had not parted with anything and his wife's additional interest was gained at the expense of probable contingent beneficiaries. (Sec. 1000(b), '39 Code; Sec. 2511, '54 Code.)

Franklin Lewis Hazelton, 29 T.C. 637, Acq., 1958-2 C.B. 5.

252.46 Remainder interest; release of power of appointment. The decedent executed a trust agreement in 1919 wherein she reserved to herself the income from the trust for life and the right to appoint by will the distribution of the trust corpus after her death. The trust was irrevocable under local law. She irrevocably released this power of appointment in 1942. *Held,* the release of the general testamentary power of appointment in 1942 did not give rise to a taxable gift of the remainder value of the trust corpus. (Sec. 1000(e), '39 Code; Sec. 2514, '54 Code.)

Ellie G. Canfield, 34 T.C. 978, Acq., 1963–1 C.B. 3.

252.47 Remainder interest; value not ascertainable. A trust provision that gives the trustee the absolute discretion to allocate all of the proceeds from the sale of any minerals to income, applicable state law providing that a portion be considered principal, renders a donor's retained interest incapable of valuation and the entire value of the property transferred in trust is subject to the gift tax. §25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 76–275, 1976–2 C.B. 299.

252.48 Remainder interest; value not ascertainable. A trust provision that capital gains from the sale or exchange of trust assets shall be allocated to income and that capital losses shall be allocated to principal renders a donor's reversionary interest incapable of valuation and the entire value of property transferred in trust is subject to gift tax. §25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 77–99, 1977–1 C.B. 295.

252.49 Reversionary; nonincome-producing property; valuation. The transfer of nonincome-producing property to an irrevocable trust, the terms of which provide for complete discretionary power in the trustee to invest and reinvest the principal, for distribution of all net income to the transferor's child, and for reversion of the property to the transferor or the transferor's estate after ten years and one day, is valued for gift tax purposes in accordance with reg. 25.2512–9 in the same manner as a transfer of income-producing property. §§25.2511–1, 25.2512–9. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 79–280, 1979–2 C.B. 340.

252.50 Revocation power held by grantor. Under the terms of a transfer in trust the right to revoke is subject to a condition which can be accomplished through the exercise of an act within the control of the grantor. *Held,* the transfer constitutes an incomplete gift inasmuch as the grantor possesses the power to revest the beneficial title to the property in himself. §86.3. (Sec. 1000, '39 Code; Sec. 2514, '54 Code.)

Rev. Rul. 54–537, 1954–2 C.B. 316.

252.51 Settlor reserving right to income. Where the grantor under an irrevocable trust agreement retained the right to trust income and to direct by her last will the distribution of trust principal, the transfer did not result in a completed gift. §86.3. (Sec. 1000, '39 Code; Sec. 2511, '54 Code.)

Rev. Rul. 54–342, 1954–2 C.B. 315.

252.52 Short term partnership interest; valuation. Taxpayers transferred in trust for 10 years and 90 days, a 34 percent interest in a partnership to be held for the benefit of beneficiaries. The income was to be distributed to or accumulated for the benefit of the beneficiaries during the trusts, and on termination, the corpus was to revert to the donor taxpayers, free of the trusts. *Held,* the taxpayers were correct in using the valuation method provided in section 25.2512–5(a) and (b) of Regulations in determining the value of the interest in the property conveyed. (Sec. 2512, '54 Code.)

Carl E. Weller, 38 T.C. 790, Acq., 1963–1 C.B. 4.

252.53 Spendthrift; right of revocation reserved. Donors transferring properties to a trust but reserving the power to revoke the trust instrument are not subject to the gift tax. Upon the death of such donors, the properties which comprise the corpus of the trust funds under the trust are entitled to new bases in the hands of the trustees under the provisions of section 1014(b)(2) and (3) of the Code, since none of the donors have any adverse interest in the disposition of the property. (Sec. 2511, '54 Code.)

Rev. Rul. 58–395, 1958–2 C.B. 398.

252.54 Split gifts; distribution to spouse and other beneficiaries. The gift-splitting provisions do not apply to a gift in trust where the trustee has the discretion to distribute the income or principal thereof to the wife and/or other beneficiaries. It is held that the wife's interest is not severable. (Sec. 2513, '54 Code.)

Rev. Rul. 56–439, 1956–2 C.B. 605.

252.55 Transfer of contingent remainder interests. The terms of a will gave the decedent's twin children, who are the same sex, contingent remainder interests, subject to a life estate, in a testamentary trust and provided that, if one predeceased the life tenant, the surviving twin would receive the entire trust corpus. Prior to the life tenant's death, the twins entered into a legally binding contract in which they agreed that, if one of them predeceased the life tenant, the survivor would transfer one-half of the trust corpus to the children of the deceased. Each twin is considered to be the transferor of the interest received by his or her children, and the transfers are subject to the gift tax upon the execution of the contract. §25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 79–238, 1979–2 C.B. 339.

252.56 Trustee's discretion to allocate income. The gift tax exclusion does not apply to a gift in trust where the trustee has discretion to allocate income among the beneficiaries. §86.10. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 55–303, 1955–1 C.B. 471.

252.57 Trustee as guardian for minor donee. A gift in trust for a minor under terms requiring the trustee to use the property for the benefit of the donee as if held by him as guardian of the donee constitutes a gift of a present interest and is, therefore, entitled to exclusion. Rev. Rul. 54–91 distinguished. §86.10. (Sec. 1003(b), '39 Code; Sec. 2503, '54 Code.)

Rev. Rul. 59–78, 1959–1 C.B. 690.

252.58 Trustee-beneficiary; power of appointment released; Washington State. The release by the trustee-income beneficiary of the power to consume, invade or appropriate the corpus of a testamentary trust for the beneficiary's health care, maintenance, and enjoyment is, under the law of the State of Washington, the exercise of a general power of appointment and is a transfer of property for gift tax purposes. §25.2514–1. (Sec. 2514, '54 Code.)

Rev. Rul. 76–547, 1976–2 C.B. 302.

252.59 Valuation of present interest. During 1952 and 1953 the taxpayers made gifts in trust of shares of common stock. The trusts provided that the trustee at any time, with the consent of the then living children of the donors, who were the beneficiaries, may distribute all or any part of the trust corpus to the children or their heirs. *Held,* the value of gifts of the present interests in the trust income could be ascertained with reasonable accuracy. (Sec. 1003, '39 Code; Sec. 2503, '54 Code.)

J. J. Newlin, 31 T.C. 451, Acq., 1960–2 C.B. 6.

Valuation

254.1 Annuity contracts. The standard rate tables contained in Rev. Rul. 62–216 are to be used in valuing annuity contracts issued by an organizatin such as a corporation, trust, fund or foundation (other than a commercial insurance company) for gift tax purposes. Rev. Rul. 62–216 clarified. Amplified by Rev. Ruls. 72–438 and 84–162. §§20.2031–7, 25.2512–5. (Secs. 72, 2031, 2512; '54 Code.)

Rev. Rul. 67–39, 1967–1 C.B. 18.

254.2 Annuity contracts. Revised annuity rate tables to be used for valuing life annuity contracts issued after September 18, 1972, by an organization such as a corporation, trust, fund or foundation (other than an insurance company) in exchange for money or other property are provided. Further, tables for valuing so called deferred payment annuity contracts issued by such organizations are set forth. Rev. Ruls. 62–216, and 67–39 amplified. §§25.2512–1, 25.2522(a)–1. (Secs. 72, 101, 170, 1011, 2031, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 72–438, 1972–2 C.B. 38.

254.3 Annuity contracts; revised tables. The valuation tables that appear in regs. 25.2512–5 and 20.2031–7, are to be used in valuing annuity contracts issued by an organization such as a corporation, trust, fund, or foundation (other than an insurance company) for gift tax and estate tax purposes respectively. §§20.2031–7, 25.2512–5. (Secs. 2031, 2512; '54 Code.)

Rev. Rul. 84–162, 1984–46 I.R.B. 8.

254.4 Charitable income interest. The value of an income interest may be computed by use of the actuarial tables prescribed in section 20.2031–7 of the Estate Tax Regulations provided the entire amount (or a specific fraction) of the income from the transferred property is receivable by the income beneficiary. Where a bequest provides that the annual income only up to three and one-half percent of the value of the subject property is payable to charity, the tables are not applicable in the valuation of the charitable interest, and a deduction is not allowable. Similarly, the gift tax charitable deduction is not allowable with respect to comparable inter vivos gifts. §§20.2031–7, 20.2055–2, 25.2512–5, 25.2522(a)–2. (Secs. 2031, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 67–195, 1967–1 C.B. 267.

254.5 Charitable unitrust interest. An example illustrates that the allowable annual charitable deduction for a unitrust interest passing to a qualified charity under a 10–year and 1–month trust will be less if the trust provides for payment to the charity of the greater of 2 percent of the net fair market value of trust property of the trust income than if the trust provided for payment limited to a 2 percent unitrust amount with any excess income accumulated. Rev. Rul. 77–223 superseded. §25.2522(c)–3. (Sec. 2522, '54 Code.)

Rev. Rul. 78–183, 1978–1 C.B. 302.

254.6 Common trust funds; fair market value. Guidelines are provided for the determination of the fair market value of participating interests in the common trust fund between the bank valuation dates for purposes of sections 2031, 2032 and 2512. A formula is provided for valuing participating interests in the common trust funds when the valuation date for estate and gift tax purposes does not coincide with the bank valuation date. §§20.2031–2, 20.2032–1, 25.2512–1. (Sec. 601.105, S.P.R.; Secs. 584, 2031, 2032, 2512, '54 Code.)

Rev. Proc. 84–17, 1984–1 C.B. 432.

254.7 Community property; residuary trust. Where the husband's will established a residuary trust of community property, naming his wife as beneficiary, the wife's consent to this trust constituted a taxable gift. The Tax Court determined that the amount of the wife's gift was the amount of her community one-half of the principal of the trust reduced by the value of her life estate in the entire principal. (Sec. 1002, '39 Code; Sec. 2512, '54 Code.)

Chase National Bank of the City of New York, 25 T.C. 617, Nonacq., 1957–2 C.B. 8.

254.8 Community property; transfer in trust. Taxpayer's husband bequeathed in trust all of his residuary estate. Under the terms of the will, the taxpayer elected to have her one-half interest in the community property included in the trust, thereby receiving a life estate in the entire corpus. *Held*, the value of the taxpayer's gift is to be measured by subtracting from the value of her one-half interest in the community property the value of her life estate in the entire community property. (Sec. 1002, '39 Code; Sec. 2512, '54 Code.)

Zillah Mae Turman, 35 T.C. 1123, Acq., 1964–2 C.B. 7; Mildred Irene Siegel, 26 T.C. 743, Acq., 1964–2 C.B. 7.

254.9 Easement; open space or scenic. A gratuitous contribution of an open space or scenic easement in perpetuity without expectation of economic benefit to the donor is a charitable contribution deductible under sections 170 and 2522 of the Code and, if not separately and distinctly valued, the value of the gift may be determinable according to the "before and after" approach. Clarified by Rev. Rul. 76–376. (Sec. 2522, '54 Code.)

Rev. Rul. 73–339, 1973–2 C.B. 68.

254.10 Group-term life insurance; employer-paid premiums. An employer may value the gift arising from the assignment of a group-term life insurance policy for which the employer pays the premium either by using Table I under reg. 1.79–3(d)(2), or the actual cost. §25.2512–6. (Sec. 2512, '54 Code.)

Rev. Rul. 84–147, 1984–41 I.R.B. 15.

254.11 Income from reversionary trust. Upon the creation of an irrevocable, reversionary trust, the income of which is for the benefit of individuals other than the grantor, and which terminates more than ten years from the creation of the trust or upon the earlier deaths of the beneficiaries, the value of the gift is measured by the value of the property transferred minus the value of the retained interest actuarially computed. Also, the gift constitutes a gift of a present interest for purposes of the $3,000 exclusion. §86.19(f). (Sec. 1005, '39 Code; Secs. 2503, 2512, '54 Code.)

Rev. Rul. 58–242, 1958–1 C.B. 251.

254.12 Income from reversionary trust. The valuation method employing an annual interest rate of 6 percent prescribed in sections 20.2031–10(a)(1) and 25.2512–9(a)(1)(i) of the regulations may not be disregarded with respect to a bequest or gift of an income interest in trust solely because the stock constituting the entire corpus of the trust has for the preceding ten years paid an average dividend yielding only 3 percent. §25.2512–9. (Secs. 2031, 2512; '54 Code.)

Rev. Rul. 77–195, 1977–1 C.B. 295.

254.13 Income from reversionary trust. Certain broad discretionary powers relating to distributions and investments that were granted to the trustee of two irrevocable trusts, the governing instruments of which provided that all the income from one was payable at least annually to the grantor's father and the income from the other to the grantor's mother and that the principal of each was to revert to the grantor upon the death of the respective beneficiary, did not prevent the value of the beneficiaries' income interests in the gifts from being presently ascertainable, and the donor was, therefore, entitled to the $3,000 per donee exclusion and to have the value fo the reversionary interests excluded from the taxable gifts. (Secs. 2503, 2512; '54 Code.)

Cherlyn C. Caldwell Martinez, 67 T.C. 60, Acq. in result, 1977–2 C.B. 1.

254.14 Interest-free loans by parents to children. Non-interest bearing loans made by a parent to a corporation, wholly-owned by his son, in return for two promissory notes, one payable in ten years and the other payable upon demand, constitute a gift to the son of the value of the use of the money. The value of the right to use the money loaned for the fixed period is subject to tax at the time the money and note were exchanged. A gift was made of the use of the money subject to the demand note during so much of each quarter of the year as such use was permitted. The Service will not follow the decision in *Elizabeth McGhee Johnson* that interest-free loans, repayable upon demand, made by parents to their children do not constitute gifts. §25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 73–61, 1973–1 C.B. 408.

254.15 Interests in property; personal residence. A charitable remainder interest in a personal residence donated to a church in 1976, subject to a 20-year term for a noncharitable tenant, is valued for gift tax purposes without taking into consideration the elements of depreciation for the period during which the property will be in the noncharitable tenant's possession. The value of the charitable remainder interest is higher for gift tax purposes than for income tax purposes. §25.2522(c)–3. (Sec. 2522, '54 Code.)

Rev. Rul. 76–473, 1976–2 C.B. 306.

254.16 Personal property; Federal excise tax added to basis. The Federal excise tax on jewelry, furs, and related articles of personal property is a relevant factor which should be considered in determining the fair market value of such property for Federal estate and gift tax purposes. §§81.10, 86.19. (Secs. 811, 1005, '39 Code; Secs. 2031, 2032, 2512, '54 Code.)

Rev. Rul. 55–71, 1955–1 C.B. 100.

254.17 Present interest in trust income. During 1952 and 1953 the taxpayers made gifts in trust of shares of common stock. The trust provided that the trustee at any time, with the consent of the then living children of the donors, who were the beneficiaries, may distribute all or any part of the trust corpus to the children or their heirs. *Held*, the value of gifts of the present interests in the trust income could be ascertained with reasonable accuracy. (Sec. 1003, '39 Code; Sec. 2503, '54 Code.)

J. J. Newlin, 31 T.C. 451, Acq., 1960–2 C.B. 6.

254.18 Prior transfers; imminent death of transferee. The actuarial tables set forth in the regulations may be disregarded in valuing annuities, life estates, terms for years, remainders, and reversions for estate and gift tax purposes only if the individual is known to have been afflicted, at the time of transfer, with an incurable physical condition that is in such an advanced stage that death is clearly imminent. Rev. Rul. 66–307 clarified. §§20.2013–4, 20.2031–10, 20.2037–1, 20.2042–1, 20.2055–2, 25.2512–9, 25.2522(c)–3. (Secs. 2013, 2031, 2037, 2042, 2055, 2512, 2522; '54 Code.)

Rev. Rul. 80–80, 1980–1 C.B. 194.

254.19 Promissory note unsatisfied at death. The gratuitous transfer of a legally binding promissory note is a completed gift under section 2511. If the note has not been satisfied at the promisor's death, no deduction is allowable under section 2053(a)(3) for the promisee's claim with respect to the note. The completed gift is not treated as an adjusted taxable gift in computing the tentative estate tax under section 2001(b)(1). Rev. Rul. 67–396 clarified. §§20.2053–4, 25.2511–1, 25.2512–4. (Secs. 2001, 2053, 2511, 2512; '54 Code.)

Rev. Rul. 84–25, 1984–1 C.B. 191.

254.20 Property transferred; additional estate tax. When a qualified heir, described in section 2032A(e), makes a gift of qualified real property to a family member who signs the agreement under section 2032A(d), the value of the gift is not reduced by the additional tax that could be subsequently imposed on the family member under section 2032A(c). §25.2512–1. (Secs. 2032A, 2512; '54 Code.)

Rev. Rul. 81–230, 1981–2. C.B. 186.

254.21 Property transferred; antenuptial agreement. The effective date of a gift that is made in future years pursuant to a legally enforceable antenuptial agreement is the date of marriage, provided such gift is susceptible of valuation at that time. §25.2511–2. (Sec. 2511, '54 Code.)

Rev. Rul. 69–347, 1969–1 C.B. 227.

254.22 Property transferred; tax paid by donee. The gift tax attributable to the transfer of property paid by the donee may be deducted from the value of transferred property where it is expressly shown or implied that payment of tax by the donee or from the property itself is a condition of the transfer. Rev. Rul. 71–232 superseded. §§25.2511–1, 25.2512–1. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 75–72, 1975–1 C.B. 310.

254.23 Property transferred; tax paid by donee; computation. Examples of the tax computation applying the formula contained in Rev. Rul. 75–72 are given for property in various states transferred gratuitously by donors residing therein, with the understanding that the donee would pay the resulting Federal and state gift taxes. §25.2512–1. (Sec. 2512, '54 Code.)

New York,
Rev. Rul. 76–49, 1976–1 C.B. 294.

North Carolina,
Rev. Rul. 76–57, 1976–1 C.B. 297.

California,
Rev. Rul. 76–104, 1976–1 C.B. 301.

Virginia,
Rev. Rul. 76–105, 1976–1 C.B. 304.

254.24 Property transferred; tax paid by donee; Wisconsin. Wisconsin law establishes a joint liability for the Wisconsin gift tax between the donor and the donee, both before and after the tax becomes overdue. For federal gift tax purposes, the gross value of transferred property is reduced by one-half of the amount of the Wisconsin gift tax if the donor transfers the property subject to the condition that the donee pay all the resulting Wisconsin gift tax and the donee relinquishes the right to contribution. §25.2512–1. (Sec. 2512, '54 Code.)

Rev. Rul. 80–111, 1980–1 C.B. 208.

254.25 Radio and television broadcasting stations. Guidelines are set forth for the determination of fair market values of radio and television broadcasting stations and for the allocation of a lump-sum purchase price of a station between depreciable and nondepreciable assets. §§20.2031–1, 25.2512–3. (Sec. 601.105, S.P.R.; Secs. 167, 334, 2031, 2512, '54 Code.)

Rev. Proc. 75–39, 1975–2 C.B. 569.

254.26 Real estate; dower interest not relinquished. The failure of the wife to relinquish her dower interest in a parcel of real estate given by the taxpayer to his children as tenants in common in which the wife neither joined in the execution of the deed nor relinquished her inchoate dower interest in the property will have no effect in determining the value of the property. (Sec. 2512, '54 Code.)

Rev. Rul. 58–13, 1958–1 C.B. 342.

254.27 Real property; market data approach. Guidance is provided to utilize the market data approach in appraising unimproved real property. §§20.2031–1, 25.2512–1. (Sec. 601.105; Secs. 170, 2031, 2512, '54 Code.)

Rev. Proc. 79–24, 1979–1 C.B. 565.

254.28 Requests for special actuarial factors. The information is described that must accompany a request for the Commissioner to furnish a special actuarial factor as provided in regs. 20.2031–10(e) and 25.2512–9(e). §§20.2031–10, 25.2512–9. (Sec. 601.201, S.P.R.; Secs. 2031, 2512, '54 Code.)

Rev. Proc. 78–21, 1978–2 C.B. 499.

254.29 Retained interest in depletable trust. The present value of a life annuity payable from the assets transferred by the annuitant to an irrevocable trust, that terminates upon his death with the property remaining payable to his heirs is based on annuity factors contained in section 25.2512–9(e) of the regulations, which take into account the annual payment until the death of the annuitant or until the fund is exhausted, whichever occurs first, and the gift in trust is the amount transferred to the trust less the value of the retained interest so computed. §§25.2512–8, 25.2512–9. (Sec. 2512, '54 Code.)

Rev. Rul. 77–454, 1977–2 C.B. 351.

254.30 Retained interest; nonincome-producing property. The transfer of nonincome-producing property to an irrevocable trust, the terms of which provide for complete discretionary power in the trustee to invest and reinvest the principal, for distribution of all net income to the transferor's child, and for reversion of the property to the transferor or the transferor's estate after ten years and one day, is valued for gift tax purposes in accordance with reg. 25.2512–9 in the same manner as a transfer of income-producing property. §§25.2511–1, 25.2512–9. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 79–280, 1979–2 C.B. 340.

254.31 Securities. Listed securities and Treasury bonds must be valued and reported in dollar fractions smaller than eighths or thirty-seconds, respectively, if the mean selling price on the applicable valuation date results in a smaller fraction. §§20.2031–2, 25.2512–2. (Secs. 2031, 2512; '54 Code.)

Rev. Rul. 68–272, 1968–1 C.B. 304.

254.32 Shares in mutual funds. The Service will not disturb the valuation prior to October 11, 1963, of shares in an open-end investment company, which are returned on the basis of the redemption value or the mean between the redemption value and the public offering price. §25.2512–6. (Sec. 601.105, S.P.R.; Sec. 2512, '54 Code.)

Rev. Proc. 64–18, 1964–1 (Part 1) C.B. 681.

254.33 Short term partnership interest in trust. Taxpayers transferred in trust for 10 years and 90 days, a 34 percent interest in a partnership to be held for the benefit of beneficiaries. The income was to be distributed to or accumulated for the benefit of the beneficiaries during the trusts, and on termination, the corpus was to revert to the donor taxpayers, free of the trusts. *Held*, the taxpayers were correct in using the valuation method provided in section 25.2512–5(a) and (b) of the Regulations in determining the value of the interest in the property conveyed. (Sec. 2512, '54 Code.)

Carl E. Weller, 38 T.C. 790, Acq., 1963–1 C.B. 4.

254.34 Split-dollar life insurance; transfer to trust. An employee, as the owner of an insurance policy held under a "split-dollar" arrangement, transferred the rights in the policy to a trust for the benefit of the employee's child. The value of the gift of the policy is the interpolated terminal reserve of the policy plus the proportionate part of the premiums paid before the date of the gift reduced by the value of the employer's interest in the policy. The employee's payment of the annual premiums after the transfer is also a gift. Further, the value of the life insurance provided by the employer, which is included in the employee's income, is deemed transferred to the trust. §§25.2511–1, 25.2512–6. (Secs. 2511, 2512; '54 Code.)

Rev. Rul. 81–198, 1981–2 C.B. 188.

254.35 Stock; book value threatened by tax claim. The taxpayer transferred to a trust, stock having a book value of approximately $200 per share. At the time of the transfer, the plant and equipment of the corporation were in poor condition and unsuitable for use in the type of business in which the corporation was engaged. There were large deficiencies of taxes, assessment of which was being considered by the Commissioner. If assessed, the tax liability would greatly exceed the corporation's assets. *Held*, the fair market value of the stock was zero at the time of the transfer. (Secs. 1002, 1005, '39 Code; Sec. 2512, '54 Code.)

Samuel Want, 29 T.C. 1223, Acq., 1958–2 C.B. 8.

254.36 Stock; closely held corporation. The valuation of stock in a closely held company should take into account a proposed merger of the company with a publicly owned corporation. §25.2512–2. (Sec. 2512, '54 Code.)

Rev. Rul. 78–367, 1978–2 C.B. 249.

254.37 Stock; closely held or no fair market value; intangible assets. In valuing the stock of closely held corporations, or the stock of corporations where market quotations are not available, all other available financial data, as well as all relevant factors affecting the fair market value must be considered. The general approach methods, and factors which must be considered in valuing such securities, are outlined. Section 4.02(f) is modified to eliminate the rule that the value of intangible assets of a business may be measured by the amount by which the appraised value of the tangible assets exceeds the net book value of such assets. Rev. Rul. 54–77 superseded. Amplified by Rev. Ruls. 77–287 and 83–120. §25.2512–2. (Sec. 1005, '39 Code; Sec. 2512, '54 Code.)

Rev. Rul. 59–60, 1959–1 C.B. 237; Rev. Rul. 65–193, 1965–2 C.B. 370.

254.38 Stock; intrafamily transfers; minority discounts. Simultaneous gifts of one-third of the stock of a family controlled corporation to each of the donor's three children are not valued as minority interests. §25.2512–1. (Sec. 2512, '54 Code.)

Rev. Rul. 81–253, 1981–2 C.B. 187.

254.39 Stock; public offering after valuation date. Taxpayer made gifts of stock in his closely held corporation, which he valued at $10 per share on his gift tax return. At the same time, he permitted his son to purchase shares at that price. The stock was offered to the public four months later at $36.66 per share. The Commissioner valued the gift at $30 per share, using the public offering price as a starting point and applying certain discount factors. The stock sold to the son was found to constitute an additional partial gift to the extent of the excess of $30 over the sale price. The Tax Court rejected these determinations, holding that the subsequent sale price was evidence of value on the earlier date, but only as support for a determination based on factors

known on the valuation date. (Sec. 2512, '54 Code.)

Morris M. Messing, 48 T.C. 502, Acq., 1968–1 C.B. 2.

254.40 Stock; recapitalization of closely held business. The significant factors in deriving the fair market value of preferred and common stock received in certain corporate reorganizations are discussed. Rev. Rul. 59–60 amplified. §§20.2031–2, 25.2512–2. (Secs. 305, 351, 354, 368, 2031, 2512; '54 Code.)

Rev. Rul. 83–120, 1983–2 C.B. 170.

254.41 Stock; restricted. Guidelines are set forth for the valuation, for Federal tax purposes, of securities that cannot be immediately resold because they are restricted from resale pursuant to Federal securities laws. Rev. Rul. 59–60 amplified. §25.2512–2. (Secs. 170, 2031, 2032, 2512; '54 Code.)

Rev. Rul. 77–287, 1977–2 C.B. 319.

254.42 Stock; restrictions on sale by owner. Restrictions on the sale of corporate stock, providing that the owner may not sell or otherwise dispose of the stock without first offering it to certain persons at a fixed or determinable price, while pertinent factors of valuation, are not binding upon the Commissioner in determining fair market values. §86.19. (Sec. 1005, '39 Code; Sec. 2512, '54 Code.)

Rev. Rul. 189, 1953–2 C.B. 294.

254.43 Stock; transfer date on corporate books. The date on which stock is transferred on the books of a corporation is the date of gift where a donor endorses the certificate and delivers it to his bank or broker with directions for effecting the transfer to a donee. Such date governs, therefore, in the determination of the fair market value of the stock. §§86.3, 86.19. (Secs. 1000, 1005, '39 Code; Secs. 2511, 2512, '54 Code.)

Rev. Rul. 54–135, 1954–1 C.B. 205.

254.44 Stock; transfer date value determined. The date a properly endorsed certificate of stock is delivered to the donee by the donor is the date for determining fair market value of the gift, even though the transfer is not recorded on the corporation's books until some later date. §§86.3, 86.19. (Secs. 1000, 1005, '39 Code; Secs. 2511, 2512, '54 Code.)

Rev. Rul. 54–554, 1954–2 C.B. 317.

254.45 Tax paid by donee. The gift tax liability assumed by the donee may be deducted from the value of transferred property if payment of tax by donee is a condition of the transfer. The donor's available unified credit is used to reduce the tax in determining the liability. §§25.2511–2, 25.2512–8. (Secs. 2505, 2511, 2512; '54 Code.)

Rev. Rul. 81–223, 1981–2 C.B. 189.

254.46 Tenancy by the entirety property. An illustration is given of the Federal gift tax consequences of the transfer of tenancy by the entirety property, purchased with the separate funds of a spouse who did not elect to report the creation of the tenancy as a gift, to a charitable remainder annuity trust in which the transferors retained joint and survivor life estates. §25.2515–3. (Sec. 2515, '54 Code.)

Rev. Rul. 76–157, 1976–1 C.B. 306.

254.47 Transfer of stock; auto dealership. Taxpayers transferred, by gift and by sale, stock in an auto dealership operated under a franchise agreement that, in effect, prohibited giving any value to goodwill on transfer of the franchise. The assignment of per share value was based on the net fair market value of the tangible assets of the business. *Held*, the value of the shares is determined by the net fair market value of the tangible assets of the corporation and goodwill in this case has no value. (Sec. 2512, '54 Code.)

Frank E. Zorniger, 62 T.C. 435, Acq. in result, 1975–1 C.B. 2.

254.48 Trust property transferred. Where a gift consists of a transfer of property in trust, the amount of the gift for the purpose of computing gift tax is the value of the property at the date of transfer undiminished by trustees' commissions. E.T. 7 superseded. §25.2512–1. (Sec. 2512, '54 Code.)

Rev. Rul. 67–230, 1967–2 C.B. 352.

254.49 Trust; contingent refund of income taxes. The taxpayer made a transfer in trust in 1943 which was made expressly irrevocable under local law in 1946, thus constituting a gift in that year. The beneficiary paid income taxes on the trust earnings in 1943 and 1944, and the trust paid the income taxes in 1945. *Held*, the income taxes paid by the beneficiary and the trustee should not be included as a part of the gift even though the beneficiary and the trustee might have a right to refund of the taxes. (Sec. 1005, '39 Code; Sec. 2512, '54 Code.)

Lois J. Newman (formerly Lois J. Senderman), 19 T.C. 708, Acq., 1957–2 C.B. 6.

254.50 Trust; income interest; value not ascertainable. The value of an income interest in a trust, whose governing instrument provides that all gains and losses from the sale of trust assets are to be credited or charged to income, is not an ascertainable present interest in property and does not qualify for the annual exclusion. §25.2503–3. (Sec. 2503, '54 Code.)

Rev. Rul. 77–358, 1977–2 C.B. 342.

254.51 Trust; relinquishment of income interest. The gift tax consequences are shown of a situation in which the sole trustee of a trust, who has the discretionary power to receive or accumulate trust income, names the remaindermen and a corporation as cotrustees, and retains and subsequently releases interests in the trust. §§25.2511–2, 25.2512–9, 25.2514–3. (Secs. 2511, 2512, 2514; '54 Code.)

Rev. Rul. 79–421, 1979–2 C.B. 347.

254.52 Trust; remainder interest; inseparable from gift portion. A trust provision that gives the trustee the absolute discretion to allocate all of the proceeds from the sale of any minerals to income, applicable state law providing that a portion be considered principal, renders a donor's retained interest incapable of valuation and the entire value of the property transferred in trust is subject to the gift tax. §25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 76–275, 1976–2 C.B. 299.

254.53 Trust; remainder interest; inseparable from gift portion. A trust provision that capital gains from the sale or exchange of trust assets shall be allocated to income and that capital losses shall be allocated to principal renders a donor's reversionary interest incapable of valuation and the entire value of property transferred in trust is subject to gift tax. §25.2511–1. (Sec. 2511, '54 Code.)

Rev. Rul. 77–99, 1977–1 C.B. 295.

254.54 U. S. savings bonds; transfer between coowners. Series E U. S. savings bonds registered in the names of *A* and *B* as coowners were later reissued in the name of *B* alone in order to effect a gift to him. The redemption value of the bonds at the time reissued is the proper value to be used for *A* for gift tax purposes, and accrued interest on the bonds before their reissue is includible in *A's* gross income for income tax purposes. §86.19. (Sec. 1005, '39 Code; Sec. 2512, '54 Code.)

Rev. Rul. 55–278, 1955–1 C.B. 47.

254.55 Unified credit; adjustment to value of gift. A donor's use of the unified credit does not result in the payment or assessment of the gift tax which would preclude the subsequent adjustment to the value of the gift. §§25.2501–1, 25.2504–2. (Secs. 2501, 2054, 2505; '54 Code.)

Rev. Rul. 84–11, 1984–1 C.B. 201.

254.56 Voting trust certificates. In 1946, family members deposited their stock in a corporation, representing 51 percent control, into a 20 year voting trust for certificates. The trust agreement provided for prior termination or extension and contained pre-emption provisions which required a first-offer to other certificate holders and then to corporation employees before certificates could be sold. The pre-emption price was based on dividends and all transferred certificates remained subject to the terms of the agreement. Periodic inter-vivos gifts and transfers were made before and after death. On estate tax returns, the certificates were valued at the prevailing pre-emption price which was always substantially lower than the over-the-counter quote. *Held*, the pre-emption price was not determinative as to value but is a factor to be considered along with all other relevant valuation factors and neither the over-the-counter price of the underlying shares nor the formula price represented the absolute index of fair market value. (Secs. 2031, 2512; '54 Code.)

Pearl Gibbons Reynolds, 55 T.C. 172, Acq., 1971–2 C.B. 2.

254.57 Voting trust certificates. The estate adjusted current earnings by an extraordinary bad debt loss for purposes of applying a price-earnings ratio to arrive at a value, subsequently discounted, for a minority interest in closely held voting trust certificates. The Commissioner disallowed the bad debt deduction and the discount, basing the values on the assumption of a private sale of all the stock. *Held*, the bad debt deduction, while affecting future earnings, does not affect the current earnings and is allowed; the discount was proper as the shares do not represent voting control. (Secs. 2031, 2035, 2512; '54 Code.)

Louis Zaiger, 64 T.C. 927, Acq., 1976–1 C.B. 1.

Waivers

(See: ADMINISTRATIVE: Extention of time)

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